CHAPTER VI

GUIDE SHEETS

GUIDE SHEET 1

VOLUNTARY QUIT

GUIDE SHEET 1 – VOLUNTARY QUIT

Voluntarily leaving work without good cause is reason for disqualification. In some states, good cause can be established only when the reason for leaving is work-related. In other states, good cause can be established if the leaving was for either personal or work-related reasons.

Many state laws, regulations or policies dictate that certain situations require a specific result. The following is a list of possible statutory provisions:

- Voluntarily leaving for domestic or marital reasons;
- Voluntarily leaving to join or accompany a spouse or companion;
- Voluntarily leaving to accept other work;
- Voluntarily leaving to go to school;
- Voluntarily leaving to enter self-employment;
- Voluntarily leaving due to retirement; and
- Failure to pay union dues or refusal to join a bona fide labor organization when membership was a condition of employment.

This list is by no means comprehensive, but it does illustrate the various conditions associated with the issue of employee-initiated separations. If the reviewer determines, after a thorough examination of the reason for leaving, that a situation is statutory, investigation of other basic factors by the adjudicator may not be necessary. In other words, by statute, certain circumstances for voluntarily quitting always lead to a decision of eligibility or always lead to a decision of denial. Each state has different "statutory" provisions which dictate the outcome of the adjudication.

Perfunctory or automatic outcomes are not statutory if the adjudicator needs additional information, other than the reason for leaving, to make a decision. For example, some states provide that it is good cause to leave work if the claimant is physically unable to perform the work. Generally good cause is not established unless the claimant pursued alternatives before leaving, e.g., leave of absence, or transfer to a job with less strenuous physical requirements.

If the adjudicator must investigate the claimant's pursuit of alternatives prior to leaving, this situation is not statutory, i.e., it does not always require a specific result. Therefore, the adjudicator must determine whether or not the claimant's reason for leaving was, in fact, voluntary and without good cause. If complete claimant fact finding establishes a voluntary quit without good cause connected with the work, the adjudicator need not obtain employer information. However, if the SWA has a more severe penalty for misconduct, or a voluntary quit determination is made to pay benefits, the adjudicator must attempt to obtain employer information.

The factfinding process is governed by the type of separation issue involved. Relevant questioning is developed to gather the facts surrounding the claimant's

Total Occurrences of Initial Separation Determinations Resulting in Disqualifications

		2006	2007	2008	Total
1	Absenteeism/Tardiness	14,139	15,788	17,510	47,437
2	Poor Quality Work	1,987	1,923	3,629	7,539
3	Poor Attitude	1,141	1,467	1,767	4,375
4	Neglect of Duty	235	275	414	924
5	Sleeping On the Job	330	361	402	1,093
6	Fighting on the Job	237	256	365	858
7	Insubordination *	11,064	12,358	15,246	38,668
8	Drugs/Alcohol	140	317	386	843
9	Patient Abuse	36	20	24	80
10	Company Property Damage	75	130	203	408
11	Theft	887	1,006	1,649	3,542

* #7 "Insubordination" includes all misconduct separations not otherwise classified

1. Failure to follow company rules, directives, safety rules
2. Failure to perform assigned duties
3. Failure to work overtime
4. Falsifying application
5. Misconduct (harassment of a fellow employee, any conduct deemed inappropriate)
6. Possession of weapon
7. Profane language
8. Resignation in lieu of discharge
9. Unauthorized use of company porperty

reason(s) for leaving work.

The information below is provided as guidance to establish the nature of the separation and whether or not good cause can be established. Voluntary leaving cases require the adjudicator to investigate several factors, such as:

BASIC QUESTIONS AND FACTORS TO CONSIDER

A. WHY DID THE CLAIMANT QUIT?

It is necessary to pinpoint why the claimant left work on that particular day. Often the claimant will cite a "laundry list" of grievances, and this may be helpful in establishing the primary reason for the claimant initiating separation from the employment. However, an adequate investigation of this factor always requires the adjudicator to pinpoint the primary reason for separation.

It is also necessary to examine the adverse effect of the situation on the claimant. Was the reason for leaving compelling? Would a reasonably prudent person in a similar situation have left work? How severe or immediate were the harmful circumstances? If it is clear there was little adverse effect involved in staying with the job, e.g., "the job was boring," the adjudicator need not investigate basic factors "B," What were the Conditions of Work? & "C," What Did The Claimant Do To Remedy The Situation Before Leaving?"

Was the reason for leaving personal or work-related? In states where the reason for leaving must be related to the work to be considered good cause, and the claimant left for personal reasons (as established by thorough factfinding), the adjudicator need not investigate Basic Factors "B" and "C," as benefits will automatically be denied.

B. WHAT WERE THE CONDITIONS OF WORK?

If the reason(s) for leaving was work-related, conditions of work must be examined. What were the claimant's duties? Rate of pay? Hours of work? Commuting distance/time? What did the employee expect from the employer? Were these expectations met? If not, details must be obtained. Unacceptable conditions of work may be a result of a breach in the employee/employer contract or substandard work conditions.

The agreement may be verbal or written, a matter of union contract, or a specific health or safety regulation peculiar to a specific industry or job. The working conditions may also be unacceptable due to a violation of

commonly accepted employment practices such as equal treatment or fair distribution of work assignments.

1. WHAT DID THE CLAIMANT DO TO REMEDY THE SITUATION BEFORE LEAVING?

To establish good cause, the claimant should have pursued all reasonable alternatives prior to leaving. Did the claimant ask for a transfer, a leave of absence, or pursue established grievance procedures? Did the claimant give the job a fair trial? If alternatives were not pursued, why not? Did the claimant believe that such action would be futile?

Even if the work had a serious adverse effect on the claimant, good cause is not established unless reasonable alternatives were pursued. Even if working conditions are determined unsuitable, the claimant should have attempted to resolve the problem before leaving unless it can be conclusively established that such an attempt would have been futile.

***HINT**: If the state requires that the reason for leaving must be connected to the work to show good cause, and thorough factfinding establishes the claimant left for purely personal reasons, investigation of Basic Factors "B" and "C" is not required.*

If the claimant gives clearly disqualifying information, and state law does not provide for a more severe penalty for certain types of discharge, and the time period allowed for an employer to respond to the notice of initial claim has expired, then the employer need not be contacted.

If the adjudicator fails to pinpoint the reason the claimant left work, enter **"I"** for Element 20 (Claimant Information).

If the claimant quit because of working conditions, the employer **must** be contacted.

It is not necessary to investigate the claimant's pursuit of alternatives prior to leaving if the claimant clearly was not suffering adverse effects. In other words, if the reason for leaving is not sufficiently compelling and would never constitute good cause (claimant was bored with the job), the claimant's pursuit of alternatives will not affect the determination so investigation in this area is not necessary.

GUIDE SHEET 2

DISCHARGE

GUIDE SHEET 2 – DISCHARGE

Discharge from a job for misconduct connected with the work is cause for disqualification. Misconduct may be defined as a willful or controllable breach of an employee's duties, responsibilities, or behavior that the employer has a right to expect. Stated another way, the misconduct may be an act or an omission that is deliberately or substantially negligent, which adversely affects the employer's legitimate business interests. Simple negligence with no harmful intent is generally not misconduct, nor is inefficiency, unsatisfactory conduct beyond the claimant's control, or good-faith errors of judgment or discretion.

EMPLOYER INFORMATION MUST BE OBTAINED OR A REASONABLE ATTEMPT MUST BE MADE TO OBTAIN IT, FOR EACH DISCHARGE DETERMINATION.

BASIC QUESTIONS AND FACTORS TO CONSIDER

WHY WAS THE CLAIMANT DISCHARGED?

It is necessary to establish as clearly as possible why the employer decided to discharge the claimant on that particular day. Often the employer will cite a "laundry list" of incidents which may have occurred over a period of time. An adequate investigation of this factor requires the adjudicator to pinpoint the incident(s) which led to the discharge. (Prior related incidents of unacceptable behavior are investigated below under "C" and "D" to establish the willfulness of the act.)

The behavior must have a direct adverse effect on the employer's business interests. Incidents which occur away from the work site and have no direct effect on the employer are generally not misconduct.

The discharge must be reasonably related in time to the act causing the separation. Misconduct is not established if a substantial time period has lapsed between the act or when the employer was aware of the act and the separation, unless the passage of time was required for completion of administrative procedures.

If the adjudicator failed to pinpoint the reason for the discharge, enter **"I"** (Inadequate) for Element No. 21, Employer Information.

B. WHAT WERE THE CONDITIONS OF WORK?

In "A" above, the adjudicator must pinpoint what the claimant **did**. Here the adjudicator must discover what the claimant **should have done.** The expected behavior may be outlined specifically in a verbal or written employer rule, union agreement, practices or conduct peculiar to a

particular industry or job, a law or regulation which governs health or safety practices, or may be covered by commonly accepted standard employment practices.

The adjudicator must determine the specific job duties of the claimant. Often employers and claimants will give a job title which is generic and does not describe the claimants' everyday duties. For example, the claimant may say that his/her job was grocery stock clerk. While this sounds specific, the adjudicator must explore exactly what the employer expected of the claimant.

C. WHAT DID THE EMPLOYER DO TO MAINTAIN THE EMPLOYER / EMPLOYEE RELATIONSHIP?

This factor focuses on how an employer tried to control or prevent the behavior that resulted in the discharge. This information is necessary to establish both the reasonableness of the employer's action and the claimant's knowledge of the result of the conduct. Gross misconduct or serious violations of common rules of employment (drunkenness, unprovoked insubordination, stealing from the employer, etc.) need not be preceded by employer control, prevention, or warnings to constitute misconduct.

During the disciplinary process the consequences of repeating an act can be implied in warnings from the employer and it is not necessary for the employer to tell the claimant the consequences of the repeated act. If the claimant denies that warnings were given, the name of the person who issued the warning(s), the number of warnings, the specific behavior leading to each warning, dates of warnings and the method used must be documented. If the employer condoned the behavior in the past, this too must be documented. The employer's actions in similar situations involving other employees may need to be investigated as well.

D. WHAT DID THE EMPLOYEE DO TO MAINTAIN THE EMPLOYEE/ EMPLOYER RELATIONSHIP?

This factor focuses on the degree to which the claimant may have been able to prevent or control the events that resulted in the discharge. Control refers to the individual's knowledge of the required behavior and the ability to reasonably foresee and take corrective action. Is there any question of whether or not the claimant was aware of the conditions of work?

If the employee was warned about a specific behavior, what did the

employee do to modify his/her behavior to remain employed? Were there uncontrollable circumstances that caused the claimant to "fail?" Or, knowing that the employer was unhappy with past performance, did the employee persist in the unacceptable behavior? What specific efforts did the claimant make to alleviate the situation?

If, after thorough factfinding about the reason for the discharge, it has been established that any of the following situations exist, further factfinding is not required:

- **both parties agree there is no misconduct (e.g., inefficiency), or**
- **there was no adverse effect on the employer (e.g., personality conflict), or**
- **the behavior was not work connected or occurred in the distant past, or**
- **gross misconduct is established (e.g., theft).**

An investigation of actions the employer took to maintain the employer/employee relationship is necessary unless one or more of the conditions described above existed. If there is disagreement between the claimant and the employer about warnings or condonation, information must be obtained from both parties. The employer must be asked to furnish specific information about the time, place, method, and content of the warning(s). If the specifics are missing when needed, enter "I" for Element 21, Employer Information.

If the employer alleges that a rule, agreement, law, or regulation was broken and the claimant denies the allegation, the documentation must include specific information about the particular condition that was breached.

If the claimant repeated an offense after being warned, documentation must show that the claimant was given an opportunity to explain any extenuating circumstances which might have justified the act. Merely repeating an offense after being warned does not automatically establish misconduct. If the factfinding does not show why the claimant repeated the offense, enter "I" for Element 20, Claimant Information.

GUIDE SHEET 3

ABLE AND AVAILABLE

GUIDE SHEET 3 – ABLE AND AVAILABLE

A claimant must be able to work and be available for work (commonly referred to as "able and available" or "A and A" requirements) to be eligible for benefits. Able to work means that the individual is physically and mentally able to perform work. Available for work means that the individual is ready and willing to accept suitable work.

Many states include the requirement in their "able and available" statute that the claimant must actively seek work to maintain continuing eligibility. Some states have a separate statutory provision for work search. Be certain the issue is correctly identified with respect to state law.

A common "A and A" issue is "approved training". All states must include in their law a provision for approved training. Section 3304(a) (8) of the Federal Unemployment Tax Act, requires that compensation shall not be denied to an individual for any week because the claimant is in training with the approval of the SWA or because of the application, to any such week in training, of state law provisions related to availability for work, active search for work, or refusal to accept work. Each state will define what constitutes approved training and waive the requirements for seeking work, refusing work or referral to work and other eligibility requirements. Approved training may be reported as code 40, Work Search, or code 30, Able/Available. Do not score the case as an incorrect issue in Element 7, Correct Issue Code?, if an approved training issue is reported as an able and available issue, even if the state has a separate law for work search.

The SWA should obtain information from the claimant and (if necessary) the training facility or learning institution to assist in making a determination. The inquiry made of the claimant should include the type of training being pursued, its duration, and the prospects of the claimant obtaining a job which is suited to the training. The SWA should also secure a description of the training curriculum and evidence that the training facility is approved by the state's accrediting or certifying agency, e.g., a State Board of Education or a State Board of Vocational Training.

BASIC QUESTIONS AND FACTORS TO CONSIDER

A. WHAT ARE THE CLAIMANT'S CIRCUMSTANCES?

This factor gives the initial picture of the claimant. Is the claimant qualified by experience, training, licenses, possession of tools, to do the type of work he/she is seeking? Is the claimant physically or mentally able to work? If the claimant is an alien, has his/her legal authorization to work in the U.S. expired? Is the claimant's availability restricted in any way? Claimants should arrange their personal circumstances so that they can immediately accept suitable work. For example, failure to have adequate

transportation or child-care arrangements unduly restricts availability for work.

Self-imposed restrictions such as an unreasonable minimum acceptable rate of pay, unwillingness to work all hours customary for an occupation, or unwillingness to commute within the customary geographical labor market area may substantially reduce employment opportunities. A temporary removal from the labor market due to incarceration, vacations, or school attendance may also adversely impact availability.

HINT: *An investigation is only necessary for factors that raise potentially disqualifying issues. It is not necessary to investigate the claimant's ability to work or the claimant's qualifications unless some information in the record raises an issue.*

B. IS THE CLAIMANT WILLING TO WORK?

Claimants who have controllable restrictions which adversely affect availability for work according to state law and policy should be given the opportunity to alter their demands. Documentation must show that the adjudicator explained the requirements of the law and if necessary, supplied labor market information to the claimant. The claimant's willingness to adjust shows an interest in returning to work. This may include altering demands or job search methods and arranging for personal circumstances such as transportation or child care problems.

Claimants' willingness to work is further measured by their documented efforts to seek work. Examination of specific work search contacts, the claimant's registration with the Employment Service or local One-Stop office, and actions the claimant has taken on referrals are all pertinent to willingness to work.

Claimants who are in approved training programs would be exempt from work search requirements; therefore, it is necessary to determine if the training is approved by the SWA. SWAs generally have lists of state approved training facilities, and claimants' attendance is generally not an issue. There are occasions, however, when the SWA must seek a ruling from the appropriate certifying board in the state verifying that the facility meets the state's requirements as an accredited institution. In the absence of accreditation, it should be determined whether the training facility complies with SWA requirements for curriculum quality and supervision of trainees. In those states that have an active search for work requirement, the claimant's efforts to seek work must be documented. Documented efforts to seek work lend credibility or cast

doubt on the claimant's statements. If the work search is not pursued and documented, score Element 20, Claimant Information (I) inadequate. Score Law and Policy, Element 23, Questionable (Q), if the decision was made without these necessary facts.

If restrictions are uncontrollable (incarceration, hospitalization, etc.) and are clearly disqualifying, the adjudicator should not be penalized for not investigating further. If restrictions are controllable (transportation, childcare, etc.), willingness to work must be investigated; efforts to seek work and willingness to alter restrictions or remove barriers are particularly important and must be documented. When the claimant agrees to alter restrictions and reinstatement for eligibility is considered, efforts to seek work under the altered conditions are particularly important.

C. HOW DO THE CLAIMANT'S REEMPLOYMENT EXPECTATIONS COMPARE TO THE PICTURE OF THE LABOR MARKET?

The claimant's circumstances must be examined in light of labor market conditions. What employment opportunities can the claimant expect given his/her particular circumstances? Is the claimant on a temporary or seasonal lay off? If the claimant's circumstances unduly reduce employment opportunities, the claimant may not be considered available for work. Specifics of the labor market such as the prevailing rate of pay for the occupation, customary shifts and hours, commuting patterns for the area, and availability of job opportunities in the claimant's customary occupation are all considerations.

In approved training issues, the SWA must determine whether training will have a beneficial effect on the claimant's reemployment. It should be established, based on the claimant's work history, if the training will facilitate his/her return to employment in an occupation where there is a recurring demand. The claimant's work history and other skills or educational background should be reviewed if the training being pursued is appropriate within the training policy guidelines established by the SWA.

The claimant's employment background and current labor market conditions for employment in the claimant's occupation should be explored to determine if:

- The claimant's occupational skill is obsolete or is in limited demand because of a declining industry, and/or
- The individual has some transferable skills and the additional short-term training would make reemployment more likely.

GUIDE SHEET 4

REFUSAL OF WORK

GUIDE SHEET 4 – REFUSAL OF WORK

Refusal of suitable work or referral or failure to apply with an employer after accepting referral, without good cause, is reason for disqualification. Three major considerations determine whether or not to impose a denial.

(1) Was there a bona fide offer of work or referral to work?
(2) Was the work suitable?
(3) Was there good cause for the refusal?

Before a disqualification is considered, the adjudicator must first establish that there was an actual refusal of a bona fide offer of a job or referral to a job. If it cannot be established that there was a bona fide offer or referral to a job, there is no need to investigate further, as no issue existed.

To determine the suitability of the work or referral to work, the working conditions are compared to: Federal/State labor standards (whether the position is vacant due to a strike, the claimant will be required to quit or join a union, etc.), prevailing wages for similar work (including temporary work) in the labor market and the claimant's experience and/or training. The adjudicator must take the initiative in determining the suitability of offered work or referral to work. The investigation must not be restricted to objections regarding the offered work/referral to work raised by the claimant.

If the adjudicator determines that the work was unsuitable, a refusal is not disqualifying and no further investigation is needed. Either a formal or an informal nonmonetary determination should be completed and reported. If the work was suitable, further investigation is required to determine if the claimant has good cause for refusal.

All state laws exempt claimants from the refusal of work provisions of their laws when claimants are enrolled in training programs approved by the state while receiving benefits. (Section 3304(a) (8) FUTA)

BASIC QUESTIONS AND FACTORS TO CONSIDER

A. WAS THERE A BONA FIDE OFFER OF WORK OR REFERRAL TO WORK?

The investigation of this factor covers two areas: (1) whether there is a genuine offer of work and (2) if the offer was successfully conveyed to the claimant. The offer of work must be for a specific job. The details of the job, i.e., duties, starting pay, hours of work, etc., must be documented. Ideally, the details of the offered work should have been conveyed to the claimant. However, if the claimant prevents the employer or the SWA representative from relaying the details by refusing the job or the referral

at the beginning of the interview, the offer is still considered bona fide. It is necessary to be sure that the claimant understood that an offer or referral was being made.

Note: If it is determined that there was no bona fide offer of work, it is not necessary to conduct further factfinding; no issue exists.

B. WAS THE JOB SUITABLE?

Suitability is determined by considering:

(1) the claimant's skills, training, experience, and capabilities, and

(2) federal/state standards that make the work unsuitable:
(a) If the wages, hours, or other conditions of the work offered are substantially less favorable than those prevailing for similar work in the locality, or
(b) If the position offered is vacant due directly to a strike, lockout, or other labor dispute or
(c) If, as a condition of being employed, the individual would be required to join, to resign from, or refrain from joining a company union or any bona fide labor organization. (The latter two factors must be documented only if relevant to the issue.)

It must always be clear that the job met federal/state standards in that the working conditions were not substantially less favorable than those prevailing for similar work in the labor market.

Labor market conditions must be taken into consideration when determining the suitability of any work offered, (e.g., claimant's prospects of work, the number of jobs available in the claimant's chosen occupation or skills area, the number of people unemployed in that occupation or skill areas, and the length of time the claimant has been unemployed).

If it is determined that the job was not suitable, it is not necessary to investigate this issue further, as claimants are never required to accept unsuitable work. Either a formal or an informal nonmonetary determination should be completed and reported. However, refusal of non-suitable work may trigger an investigation to determine if the claimant met the able and available requirements. For example, the claimant refused the offer of work due to illness, this would raise a question of availability.

Note: If the state would never penalize a claimant for refusing work because of illness or other personal circumstances not related to the suitability of the work and the claimant made every effort to remove the restriction(s), then the adjudicator need not examine the suitability of the work.

C. DID THE CLAIMANT HAVE GOOD CAUSE TO REFUSE SUITABLE WORK OR REFERRAL TO SUITABLE WORK?

If the job offered was suitable, the claimant's objections must be examined for good cause. Personal reasons for refusing suitable work may include illness, hospitalization, vacation, forgetting to report for the interview, or lack of child care or transportation. Often these personal circumstances were within the claimant's control (e.g., lack of transportation, lack of child care, or lack of tools). In order to establish good cause, the claimant must have made every reasonable attempt to remove the restrictions pertaining to the refusal. These issues raise a separate question of availability.

If the claimant's reason for refusal of the work or referral to work was job related -- e.g., wages, hours, type of work, distance, etc. -- good cause or lack of good cause should be determined based on consideration of the claimant's length of unemployment, prior earnings/working conditions, prospects of other employment, and availability of work in the labor market.

HINT: *If the documentation does not clearly show all of the details of the offered:*

(a) ***job,*** *enter "I" (Inadequate) for Element 21 (Employer Information);*

(b) ***referral,*** *enter "I" (Inadequate) for Element 22 (Information From Others).*

If it is established that a bona fide offer of work or a referral to work was made, the details of the offered work/referral must be compared to prevailing conditions. If prevailing conditions are not documented, enter "N" for Element 22 (Information from others). If some, but not all, of the prevailing conditions are documented, enter "I" (Inadequate) for Element 22.

Labor market conditions should be taken into consideration when determining suitability of work.

When a refusal of the work or referral to work decision that allows benefits also

raises an A&A issue, the state agency policy will determine whether or not to resolve the A&A issue. Multiple issues may be addressed by the same set of facts (even when contained in the same statement). As long as there are facts to support each issue, a count may be taken for each determination. *For example:* While only one Able/Available/Actively Seeking Work issue may be reported per week, it is possible to report both an A&A and a Refusal of Work issue for the same week.

GUIDE SHEET 5

DISQUALIFYING/OTHER DEDUCTIBLE INCOME

GUIDE SHEET 5 – DISQUALIFYING/OTHER DEDUCTIBLE INCOME

Unemployment compensation can be denied to any individual for the receipt of disqualifying income. This income may result in the total or partial reduction of weekly benefits.

Disqualifying or deductible income is governed by state law. Although state law provisions vary, most provide for disqualification or reduction in benefits for any week or part of a week during which the claimant receives income such as earnings, wages in lieu of notice, dismissal pay, workers' compensation, back pay, holiday or vacation pay, payments made under an employer's pension plan or Old-Age, Survivors, and Disability Insurance (OASDI), and unemployment benefits under another state or Federal law.

A written determination must be issued to the claimant with respect to the first week in the claimant's benefit year in which there is a reduction for income other than earnings. A written determination need not be given for subsequent weeks or a transitional claim if the deduction is based on the same set of facts which applied to the first week.

The written determination must explain the rules and methods for computing the deduction, the period affected, and that there will be no further determinations issued for subsequent weeks if the future deduction is based on the same facts. If there is no explanation in the written determination, the state may instead provide the explanation in a claimant fact sheet, informational pamphlet or booklet.

There is an **exception** to issuing a written determination regarding earnings. A written determination is not required if, at the claimant's benefits rights interview or through an official SWA brochure or pamphlet, the claimant is advised of the conditions under which certain types of income are disqualifying or deductible. The claimant has to be advised that he/she must request a written determination before any appeal action can take place.

Income usually must be **payable** to be disqualifying or deductible. In other words, if an individual has been determined to be eligible for payments which are considered disqualifying under state law, the payments can be deducted by the SWA from the claimant's weekly benefit amount **before** actual payment is received by the claimant. The fact that the claimant has not received the income but is due the remuneration is considered "constructive receipt" for the purposes of UI eligibility.

Federal Unemployment Tax Act (FUTA), Section 3304 (a) (15) addresses reducing a claimant's unemployment compensation by any pension, retirement or similar periodic payment the individual is receiving. States have the option of reducing benefits only when a base period employer has contributed to the

pension plan and (except for Social Security and Railroad retirement) the base period services affect eligibility for or increase the amount of the pension. States may also limit the amount of the reduction to take into account contributions made by the individual to the pension plan. States, therefore, have considerable latitude regarding how pensions are treated.

Many pension plans are subject to regular Cost of Living Adjustments (COLAs). The COLAs are often affected by changes to the Consumer Price Indexes (CPI), issued by the Department of Labor' s Bureau of Labor Statistics. Government pensions with COLAs affected by changes to CPI include: Social Security Old Age, Survivors and Disability Insurance (OASDI); Supplemental Security Income (SSI) programs; Federal civilian pensions; Federal military pensions; and some state pensions. States are not required to conduct claimant factfinding prior to issuing a determination each time a claimant's government pension is affected by a regular COLA that is based on the CPI or other publicly published document, but if they do not do so, the initial nonmonetary determination that reduces benefits must indicate that the amount of the reduction may change due to a COLA.

Note: Aside from government pensions affected by COLAs, any time there is a change in the claimant's pension amount, a separate determination notice must be made reflecting the effect on the claimant's benefit rights. The claimant must be given the opportunity to provide information before a determination can be made. Adjudicators must be aware of state law and policy affecting the receipt of this type of income.

BASIC QUESTIONS AND FACTORS TO CONSIDER

A. WHAT TYPE OF INCOME DID THE CLAIMANT RECEIVE?

The type of income the claimant received or will receive (wages, remuneration, pensions, etc.) and the period to which it is applicable must be recorded during the factfinding process to help determine the week affected and the deduction from the claimant's weekly benefit amount. If state law dictates the week to which holiday pay must be allocated, no verification from the employer or claimant is needed. This only applies to holiday pay and not to any other type of income, such as vacation pay.

Most states require that weekly benefits be reduced if the claimant is receiving or will receive a pension from a base period employer. Therefore, it is important to determine if the income also represents pension payments from a base period employer. In the case of pensions (also known as pension offsets), Section 3305 (a) (15), FUTA, requires that compensation be payable (constructive receipt) in order for the

reduction to apply. Confirmation must be obtained from the employer or pension plan that a pension is "payable" before a reduction is made.

The type of income determines the formula the state applies for reducing the claimant's weekly benefit amount (WBA). In many states, when earnings are less than the WBA (based on a percentage that is disregarded), the claimant receives the difference between the amount deducted (after the disregard) and the WBA.

In others, a dollar-for-dollar reduction may apply, or no benefits are payable if the claimant receives disqualifying income regardless of the amount.

B. WHAT IS THE GROSS AMOUNT OF INCOME THE CLAIMANT RECEIVED?

The gross amount of income received is used to determine its impact on the claimant's WBA – present, past, or future.

It will be necessary to determine, based on the amount actually received or, in the case of pensions, "constructively received," the weeks to which the income is applicable and the amount of reduction required by law and policy.

C. IF THE CLAIMANT IS RECEIVING A PENSION, WHAT PERCENT WAS CONTRIBUTED BY THE CLAIMANT AND WHAT PERCENT BY THE EMPLOYER?

It may be necessary to know, based on the applicable state law and policy, how much each party contributed to the pension of the claimant. This information will determine the amount of deduction from the WBA. It is important to know if the state reduces benefits only when a base period employer contributes to a pension plan or limits reduction taking into account contributions made by the individual to the pension plan.

D. WHAT PERIOD DOES THE INCOME COVER?

The SWA must determine the time period to which the income applies in order to establish the effective date of the deduction or disqualification. This period covered will also provide the SWA with the necessary information about the next modification to the claimant's benefits so that a new determination can be issued reflecting the change in circumstances and its effect on the claim.

GUIDE SHEET 5 – DISQUALIFYING/OTHER DEDUCTIBLE INCOME

E. WILL THE AMOUNT GO UP OR DOWN? IF SO, WHEN?

It is important to determine if future weeks will be affected so that the claim can be flagged for a subsequent determination modifying the claimant's weekly benefits and remaining benefit account balance. Document the effective date of the adjustment and the benefit week to which the adjustment applies.

***HINT**: The party taking the action is the party from whom specific information must be obtained as to type and amount of payment. Depending on the type of payment in question, i.e., employer payments or pensions from other sources, the appropriate entry would be made either in Element 21 (Employer Information) or Element 22 (Information from Others).*

If information about a payment is received from an employer, the claimant must be contacted for verification of actual receipt of the payment and the amount. If no verification is made, enter either "I" (inadequate) or "N" (not obtained).

GUIDE SHEET 6

REPORTING REQUIREMENTS

GUIDE SHEET 6 – REPORTING REQUIREMENTS

State policy (conforming to and complying with the Federal Claim Filing Standards – ESM 5000-5001) dictates when and how claimants are to file claims to maintain their continuing eligibility. State law, interpreted through state policy, also sets requirements for claimant reporting to provide information regarding a potentially disqualifying issue. For purposes of this guide sheet, failure to report or respond means: reporting, calling or e-mailing at a time other than assigned by the SWA; failing to respond via e-mail, failing to report, call in or be available by phone at an appointed time to provide needed claim information to resolve a potential issue; failing to respond to a call-in notice, appointment notice, e-mail notice or message generated during the internet filing process for factfinding or from the Employment Service office for placement or referral considerations, eligibility reviews, worker profiling, registration, etc.

State law and policy dictate the protocols for resolving reporting requirement issues. The adjudicator must investigate the reason for the failure to report/respond to determine if the claimant had good cause for failing to meet reporting requirements. However, if the state agency advises the claimant of his/her rights and responsibilities in the written notice and the claimant fails to contact the agency to establish good cause, the agency has met its responsibility.

State policy may require excusing the first instance of failure to report and direct the SWA to warn the claimant that future benefits will be denied for failure to meet reporting requirements unless the SWA approves. This is important to remember when distinguishing reporting requirements from routine claimstaking functions. Where warnings are required, there is no potential to deny. The only outcome can be the acknowledgement in the claims file of the warning. There is no potential to deny benefits until a second incident occurs, and no count can be taken for a nonmonetary determination because there is no issue.

Many states also apply their reporting requirements provisions (i.e., filing and registration) to a claimant's request for backdating a claim to an earlier effective date. A request for predating may be based on the fact that the individual was: in partial unemployment for a period of weeks and unaware that benefits were payable during such periods of partial unemployment; given misinformation from state agency personnel regarding filing procedures; given erroneous information from his or her employer; or affected by other situations such as illness, death in the family, etc., which are recognized by the state for establishing a basis for allowing or denying the request to predate the claim.

GUIDE SHEET 6 – REPORTING REQUIREMENTS

BASIC QUESTIONS AND FACTORS TO CONSIDER

A. WHAT ARE THE STATE REPORTING REQUIREMENTS?

State requirements (Law/Policy) dictate if an issue exists or not. Were there mitigating circumstances that the state recognizes which would influence the outcome of the adjudication?

If a claimant does not report or respond as required by state law and policy, a potentially disqualifying issue exists. State law may permit the claimant to receive benefits for a specific period of time if the claimant was ill. However, there may be other factors which cause the claimant to be disqualified totally or partially for the week. For example, state law may require that benefits be denied or proportionately reduced if suitable work was offered to the claimant during the week being claimed and the claimant was unable to accept the work because of the illness.

If the state policy requires a warning before a reporting issue can be potentially disqualifying, then a review of the claim record must be made to determine if a warning was given to the claimant. If there was no prior warning, a countable nonmonetary determination does not exist.

B. DID THE CLAIMANT FAIL TO PROVIDE A SWA OFFICE WITH REQUIRED CLAIM INFORMATION?

If the state law and policy requires a claimant to provide information which is needed to establish the claimant's benefit rights, e.g., social security number, DD214, or alien registration card, and the claimant fails to comply with the requirement, the failure may result in the denial of benefits.

C. WAS THE CLAIMANT REQUIRED TO REPORT TO THE EMPLOYMENT SERVICE OFFICE FOR A POSSIBLE REFERRAL OR TO REGISTER IN ACCORDANCE WITH STATE POLICY?

It is important to determine under what circumstances a claimant failed to report to an ES office as directed. Many state laws provide for the denial of benefits to individuals who fail to: register with ES; report to respond to a call-in card, letter or message relative to a job opening; meet required conditions for allowing the predating of a claim to an earlier effective date, etc.

Failure to meet the reporting requirements can carry different penalties depending on the type of failure to report. The adjudicator may also elec not to impose a denial once all the facts are obtained (provided that state law and policy allow adjudicator discretion).

D. WHAT WAS THE CAUSE OF THE CLAIMANT'S FAILURE TO REPORT?

A determination to approve or deny a claim on issues of failing to report, in many states, requires inquiry into the cause of the failure. If the claimant establishes good cause, as defined by the state, the claim may be allowed. However, the facts may also give rise to an able and available issue. The facts established by the adjudicator must be sufficient to support the determination rendered.

***HINT**: If the documentation does not establish that the claimant was given an opportunity to explain the reason for the late report or failure to report and the case file does not establish the adjudicator made a reasonable attempt to obtain the claimant's explanation, Element 20 must have an entry of "N".*

E. WHAT MUST BE CONTAINED IN THE WRITTEN NOTICE TO ESTABLISH THAT THE AGENCY MET ITS RESPONSIBILITY?

The claimant information should be considered adequate when evaluating the quality of the determination if a claimant is notified to report or contact the SWA, and the notice:

- advises the claimant of the date and time to report,
- advises the claimant of the consequences of failure to report,
- provides the claimant with the necessary information and the opportunity to contact the SWA to explain the reasons for failure to report and/or reschedule, and
- advises that the SWA may consider whether the claimant had good cause for failure to report as directed.

GUIDE SHEET 7

ALIEN STATUS

GUIDE SHEET 7 - ALIEN STATUS

FUTA, Section (3304(a)(14)(A) stipulates that unemployment compensation shall not be payable on the basis of services performed by an alien unless the alien meets the following conditions:

- The alien was lawfully admitted for permanent residence at the time the services were performed,
- The alien was lawfully present for the purposes of performing the services, or
- The alien was permanently residing in the United States under color of law (PRUCOL) at the time these services were performed (see UIPL 1-86; UIPL 1-86, Change 1, and Supplement #3 of the Draft Language and Commentary to Implement the Unemployment Compensation Amendments of 1976-P.L. 94-566, and UIPL 14-91 for details on those aliens identified as being in PRUCOL status).

An alien must also be legally authorized to work in the United States at the time benefits are claimed - the latter giving rise to an availability issue.

On March 1, 2003, the former Immigration and Naturalization Service (INS) was abolished and its functions and units incorporated into the Department of Homeland Security (DHS). The responsibility for providing immigration-related services and benefits such as naturalization and work authorization were transferred to the U.S. Citizenship and Immigration Services (USCIS).

Two major eligibility issues require determinations concerning aliens. The first deals with monetary eligibility. Base period wages can be allowed to establish monetary eligibility only for those services the alien performed while in an acceptable legal category. The second deals with the alien's nonmonetary eligibility, i.e. the "otherwise eligible" component of all state laws--in this instance, availability. If the alien's legal authorization has expired, he/she is considered unavailable, and the issue must be adjudicated under state "availability "law.

The SWA is responsible for determining an alien's eligibility based on the facts and evidence substantiating the alien's legal work status. Therefore, a denial of benefits to the alien based on disallowed base period wages may only be done based on a preponderance of evidence. This means that the adjudicator must obtain necessary facts and sufficient evidence to support a finding that while the base period wages were earned, the alien was not in an acceptable status (totally, or in part). The adjudicator must weigh the evidence carefully and must be satisfied that the weight of evidence supports a conclusion that benefits should be denied.

Availability, as a requirement of being otherwise eligible, is applicable to all claimants, including aliens (equal treatment applies to all beneficiaries of the UI system).

***HINT**: Foreign workers that have been granted H-1B status allowing them to remain in the USA provided they remain employed by a sponsoring employer are currently not considered available for work within the meaning of the availability requirements for UC.*

BASIC QUESTIONS AND FACTORS TO CONSIDER

A. WAS THE CLAIMANT'S ALIEN STATUS VERIFIED WITH THE USCIS?

The Immigration Reform and Control Act (IRCA) requires state agencies to verify the alien's status with USCIS. It is **critical** to verify with USCIS the claimant's authorization to work at the time base period wages were earned and to establish current legal status to satisfy state availability requirements.

Verification is accomplished using the Systematic Alien Verification for Entitlement (SAVE) program or the Automated Status Verification System (ASVS). Two verification methods are available to states:

(a) **Primary Verification.** This is an automated query by the SWA into the USCIS data base; and

(b) **Secondary Verification.** This process is used when indicated by the primary verification system ("initiate secondary verification"), when documentation provided by the alien is suspect or altered, or contains invalid alien registration numbers (A-50,000,000 to A-60,000,000 series), and when designated states are waived from using the primary verification. Secondary verification involves a more thorough search of USCIS files to validate the alien's legal status. USCIS conducts an in-depth search of the Alien Control Index. (Refer to SAVE program manual for in-depth treatment of alien documentation and verification procedures.)

Since the implementation of SAVE, USCIS has re-engineered

the way it delivers immigration status verification information by automating the secondary verification process. The Automated Status Verification System (ASVS) is an access method that eliminates the need, in most cases, for SWAs to fill out forms, copy immigration documents and send secondary requests via mail.

Verification with USCIS should confirm the documentation provided by the claimant.

Disallowance of an alien's base period wage credits may only be done based on a **preponderance of evidence** (evidence which exists that has a greater weight and is more persuasive in supporting a finding of fact). The facts and evidence obtained must come from the claimant, the USCIS via SAVE, and/or the employer, who may provide information to support the determination to deny the use of all, part, or none of the base period wages. Facts must be sufficiently detailed to support the determination to deny and must include:

- Dates of authorization
- Copies of original documentation
- Verification from INS (SAVE)

B. WHAT WAS THE ALIEN'S LEGAL STATUS DURING THE STATE'S BASE PERIOD?

The alien must provide proof that he/she was in an acceptable status as determined by the USCIS to work in the United States during the state's base period. There are a number of documents issued by the USCIS that allow aliens to reside and work in the United States. Among them, the principal authorizing document is the Permanent Resident Card more commonly referred to as the "Green Card" and formerly known as the Alien Registration Card (ARC),

Monetary eligibility is based solely on wages legally earned during the base period applies to the new initial claim. The period the alien was authorized to work must be established to determine if all, some, or none of the alien's base period wages were earned while he/she was in legal status.

If the alien refuses to provide requested information or documentation to establish eligibility for benefits, the issue should be resolved under the state's claim filing requirements (failure to provide requested information for establishing a claim).

C. WHAT IS CURRENT WORK STATUS OF ALIEN?

An alien's current availability for work rests with the alien's authorization to work and the period authorized. Verification is necessary to ensure that benefits are not paid beyond the expiration date of the work authorization, regardless of a valid determination of monetary eligibility; however this issue should be resolved and reported as an availability issue.

- In order to maintain continuing eligibility based on the availability requirement of state law, the alien must still be legally authorized to work. Expiration of legal authorization to work requires an adjudication of the alien's availability for work.

- Meeting state availability requirements can only be determined when the expiration date of the alien's work authorization has been established. An alien is not considered available for work if his/her authorization to work legally in the United States has expired.

  EXCEPTION: CANADIAN CITIZENS -- Canadian nationals filing under the Interstate Benefit Payment Plan need only satisfy Canadian availability requirements. To determine availability the adjudicator must obtain a factfinding statement and verification from the Canadian agency that the alien meets Canadian availability requirements. Failure to meet Canadian requirements should result in a denial of benefits.

D. ALIEN PERMANENTLY RESIDING UNDER COLOR OF LAW (PRUCOL).

Adjudicating issues related to PRUCOL status is the most problematic of the alien status determinations. To be considered under PRUCOL, an alien must meet the requirements of a two part test: (1) the USCIS must know of the alien's presence and provide the alien with **written assurance** that enforcement of deportation is not planned; and (2) the alien must be "permanently residing" in the United States. A mere application for PRUCOL status does not convey permanence. The USCIS must affirmatively determine the alien's PRUCOL status.

In order to establish PRUCOL status, the alien must provide the agency with written assurance that enforcement of deportation is not planned or documentation verifying his/her legal status. The adjudicator then must obtain substantiating proof of PRUCOL status from USCIS via SAVE procedures. Confirmation from USCIS will determine whether the alien

was granted permanent residence status and therefore has met UI eligibility requirements.

The Immigration and Nationality Act (INA) defines permanent as "a relationship of [a] continuing or lasting nature. . . even though it is one that may be dissolved eventually at the instance of either of the United States or the individual. . . ". PRUCOL applies to only:

- Aliens admitted as refugees, asylees or parolees (see Sec. 207, 208 and 212(d)(5), Immigration and Nationality Act (INA).
- Aliens presumed to have been lawfully admitted for permanent residence although they lack documentation of their admission to the U.S. (see Supplement #3 of Draft Language and Commentary to Implement the Unemployment Compensation Amendments of 1976-P.L. 94-566).
- Aliens who, after USCIS review, have been granted lawful immigration status to remain in the U.S. indefinitely or are members of a class who have been authorized to remain in the U.S. indefinitely (see UIPL No.1-86, and UIPL No.1-86, Change 1).

HINT: *All claimants who are not citizens must have their Permanent Resident Card or 'green card' status verified with USCIS. This is only routine verification and is not an issue requiring a nonmonetary determination. Even if USCIS requests a state to institute secondary verification, an issue only exists if USCIS indicates there is a problem. If USCIS indicates there is a problem, an investigation may result in two nonmonetary determinations, one for current availability under the state's A&A law and a nonmonetary suppressing the base period wages under the Alien Status section of law.*

GUIDE SHEET 8

EDUCATIONAL EMPLOYEES BETWEEN OR WITHIN TERMS

GUIDE SHEET 8 – EDUCATIONAL EMPLOYEES BETWEEN AND WITHIN TERMS

Section 3304(a)(6)(A), clauses (i) – (vi), of the Federal Unemployment Tax Act provide exceptions to the equal treatment provisions of section 3304(a)(6)(A) of the Federal Unemployment Tax Act, with regard to determining eligibility for certain categories of claimants employed by educational institutions, Educational Service Agencies (ESAs), and certain other entities, including certain Head Start[3] programs. These provisions are referred to as "between or within terms denial" provisions.

These provisions are often referred to as the "between or within terms denial" provisions because they provide that benefits are not payable based on services performed for educational employers (1) between two successive academic years or terms, or (2) during an "established and customary vacation period or holiday recess" that occurs within an academic term. For this denial to apply, the claimant must have a contract or reasonable assurance of employment for the following year, term, or remainder of a term. These denial provisions do *not* apply to services performed for non-educational employers. As such, these non-educational services may be used to establish monetary eligibility, provided the claimant meets all other state eligibility requirements.

Federal law *prohibits* the use of base period wages to establish monetary eligibility based on services performed in an instructional, research, or principal administrative capacity (a "professional" capacity) for educational employers when a contract or reasonable assurance exists. Thus, all state laws will have conforming provisions for professional services. Federal law *permits* similar treatment for services performed in any other capacity (a "nonprofessional" capacity, such as custodial or cafeteria services) and for services performed by employees of state and local governments, nonprofit organizations and federally recognized Indian tribes if they provided services "to or on behalf of" an educational institution (such as school crossing guards). (See UIPL 43-93.) Thus, not all states have laws paralleling these "nonprofessional" provisions. Whether this prohibition on the use of services applies to UCFE and UCX claims depends on how state law is written. (See UIPL 11-86).

The SWA is responsible for determining whether the claimant has a contract or reasonable assurance of performing services in the next academic period. In determining whether reasonable assurance exists, the SWA must determine the following. Also, if a "crossover" situation exists, the claimant may not be denied even if he or she otherwise has a reasonable assurance.

[3] To determine which Head Start agencies are subject to the between / within terms denial, consult UIPL 41-97.

GUIDE SHEET 8 – EDUCATIONAL EMPLOYEES BETWEEN OR WITHIN TERMS

BASIC QUESTIONS AND FACTORS TO CONSIDER

A. IS CLAIMANT IN "BETWEEN OR WITHIN TERMS" STATUS?

The SWA must determine the beginning and ending dates of the academic period (or vacation or recess) in question. The requirement that educational services not be used pertains only to (1) periods between academic years and terms and (2) vacations and recesses occurring within an academic term. Also, the SWA must determine that the claimant has performed services during the *prior* academic period for the denial to apply.

B. DOES A CONTRACT OR REASONABLE ASSURANCE EXIST?

UIPL 4-87 provides that, to meet the test of reasonable assurance:

- There must be a bona fide (genuine, good faith) offer of employment in the second academic period. An offer of employment is not bona fide if only a possibility of employment exists.

- The assurance must be given by an authorized individual. If the individual was not authorized, the offer is not bona fide.

- The terms and conditions of the job offered in the second academic year or term must not be substantially less (as defined by state law/policy) than the terms and conditions for the job in the first period.

A reasonable attempt should be made with the educational employer to obtain a statement either by telephone or in writing that the employee was given a bona fide offer of a specified job in the next academic period or term. Facts should establish how the offer was conveyed and if the person who made the offer was authorized to do so. The case file must be documented with the terms of the offer, the name of the person authorized to make the offer, and date of return to work for the school employer.

The claimant's employment status with the educational employer should be explored to determine if reemployment is automatic. Certain employees (usually teachers) attain tenured status guaranteeing them automatic reemployment. The status of others, such as non-tenured teachers (year-to-year only based on fund availability - no automatic guarantee of reemployment), substitutes, and other professional or non-

professional employees of educational institutions, or those who provide services to them (school crossing guards employed by police departments, among others), should also be established. It may be customary that from year to year the budget for the various positions is not known until a later date. If this is customary and the claimant's employment pattern with the employer substantiates this, then the individual has reasonable assurance.

This information is important to know if it is later established that funding is not available. If funding is not available the "between or within terms" issue may change to a "lack of work." In the case of non-professional employees, the claimant may be entitled to a retroactive payment for each week the claimant filed a timely claim (as determined under state law.) In the case of professional employees, the only way to retroactively pay benefits is to establish that there was no reasonable assurance because there was no bona fide (genuine, good faith) offer of employment.

Note that reasonable assurance will exist even if the educational employer offering the job in the second period is *different* from the employer in the first period.

C. WHAT ARE THE TERMS AND CONDITIONS OF THE JOB OFFERED?

For reasonable assurance to exist, the economic terms and conditions of the job offered for the next period must not be substantially less than those applicable to the first period. The employer should provide sufficient information concerning the terms and conditions of the job offered for the next academic period for the adjudicator to determine if the economic terms and conditions of the job offered for the next period are not substantially less than those applicable to the first period.

If the claimant rejects a bona fide offer, an issue regarding a separation or refusal of work (as determined under state law) would exist.

D. HOW ARE SEPARATION ISSUES COORDINATED WITH REASONABLE ASSURANCE ISSUES?

It may be necessary to coordinate a reasonable assurance issue with a separation issue. For example, when the educational employer advises the SWA that the claimant has refused an offer of employment for the fall term, a separation issue will exist. State law determines when or if the SWA must adjudicate a separation issue. For example, some states do not adjudicate a voluntary quit issue unless the work is currently available, which means that a separation issue would not exist until the fall term.

That a separation issue has been resolved does not mean that there is no need to determine whether a contract or reasonable assurance exists. A contract or reasonable assurance does not necessarily end because the school employee refused to return to work with the same employer in the next academic period. If the separation issue will not be adjudicated until the following academic term, the reasonable assurance issue must be adjudicated immediately. In some cases, the facts related to the reason for separation may assist in determining whether reasonable assurance exists. If the claimant has not had an offer of work from

Separation and/or nonseparation issues that occur at times other than between academic years or terms, during vacation periods or holiday recesses within terms involving employees of educational institutions, ESAs, and certain other entities will be adjudicated under the regular provisions of state law. The SWA, however, must adjudicate the reasonable assurance issue at the beginning of the next break in the academic term to determine if reasonable assurance applies. The adjudication could result in a determination that suppresses wages until the break in terms or vacation/holiday recess period ends, or one that allows the wages to continue to be used because reasonable assurance no longer applies.

E. DO THE EXCEPTIONS FOR "CROSSOVERS" APPLY?

The between and within terms denial is not applicable to certain situations called "crossovers." Crossovers occur when (1) a claimant who performed services in one capacity (i.e., professional or nonprofessional) has a reasonable assurance of performing services in the *other* capacity, or (2) a claimant goes from one type of academic employer to another (e.g., from an educational institution to an ESA.) Details for some crossover situations are found in UIPLs 18-78 and 30-85.

The following examples illustrate crossover situations:

Example No. 1: The between terms denial does not apply when crossing over from a professional to a nonprofessional capacity, or vice versa. For example, a teacher (a professional) at an educational institution receives assurance of a job in the next period as a teachers aide (which is, for purposes of the between and within terms denial, a nonprofessional classification because the services are not performed in an instructional, research, or principal administrative capacity). Because the individual is "crossing over" from one capacity (professional) to another (nonprofessional), the between terms denial does not apply.

(Note: the within terms denial does apply in this type of crossover situation.)

Example No. 2: The between and within terms denial does not apply when crossing over from one type of educational employer (i.e., an educational institution, ESA, or entity providing services to or on behalf of an educational institution) to another type. For example, a school crossing guard who is employed by the local police department receives assurance of a job as a cafeteria worker for the local school. The individual is "crossing over" from one type of employer (providing services to or on behalf of an educational institution) to another type of employer (an educational institution). Because of this, the between and within terms denial does not apply.

GUIDE SHEET 9

PROFESSIONAL ATHLETES BETWEEN SEASONS

GUIDE SHEET 9 - PROFESSIONAL ATHLETES BETWEEN SEASONS

The Federal Unemployment Tax Act, Section 3304(a)(13), requires that compensation shall not be payable to any individual on the basis of services, substantially all[4] of which consist of participating in sports or athletic events, or training or preparing to participate, for any week between two successive sports seasons, if the individual performed services in the first season (or similar period), and there is a reasonable assurance that the individual will perform services in the second season (or similar period).

The SWA is responsible for determining whether the claimant has reasonable assurance of performing services in the next ensuing athletic season or similar period. To determine if there is reasonable assurance that the individual will be playing the next season or in a similar period, the SWA must establish if:

- There is a contract, written or verbal, **or**
- The player offered to work and the employer expressed his/her interest in hiring the player for the next season or a similar period, **or**
- The athlete expresses a readiness and intent to participate in the sport for the next season. The fact that the athlete may not have a formal offer from a professional athletic organization does not mean that reasonable assurance does not exist. Reasonable assurance is evident if the claimant asserts that he/she intends to pursue employment as a professional athlete for the next season or similar period.

States have the option of broadening the definition of an athlete to include ancillary personnel involved with the team or professional event. This may include managers, coaches, and trainers employed by professional teams, or referees and umpires employed by professional leagues or associations. Denial of benefits to these groups is a state option. State law and policy must clearly identify those individuals subject to disqualification under its "professional athlete" provisions.

[4] The term "substantially all" has been interpreted to mean 90% or more of the claimant's services in the base period were performed as an athlete.

GUIDE SHEET 9 - PROFESSIONAL ATHLETES BETWEEN SEASONS

BASIC QUESTIONS AND FACTORS TO CONSIDER

A. IS THE CLAIMANT "BETWEEN SUCCESSIVE SPORTS SEASONS?

It is not required that the individual perform the services for the same professional athletic organization to be considered "between successive sports seasons."

Determine the type of sport in which the claimant participated and the official beginning and ending dates for that sports season.

Review dates to determine if the period of benefits claimed are prior to, during, or subsequent to the official sports season. If the claim for benefits falls between the official season or period **and** the claimant does **not** have reasonable assurance of performing such services in the next season or similar period, benefits may be payable.

B. WERE SUBSTANTIALLY ALL (90% or as defined by state law) OF THE CLAIMANT'S SERVICES PERFORMED DURING THE BASE PERIOD IN A PROFESSIONAL SPORT?

The fact to be established is whether the claimant actually was employed as a professional athlete during the base period.

If substantially all services during the base period were performed as a professional athlete, then **NONE** (athletic and non-athletic) of the base period wage credits can be used to establish monetary eligibility for any weeks that begin during a period between sports seasons or similar periods.

If, however, less than 90% (or the amount determined by state law) of the claimant's services were performed in professional sports, then **ALL**(athletic and non-athletic) the claimant's base period wages may be used to establish monetary eligibility for any weeks that begin during a period between sports seasons or similar periods.

C. DOES THE CLAIMANT HAVE REASONABLE ASSURANCE OF PERFORMING THE SAME OR SIMILAR SERVICES DURING THE NEXT SEASON OR SIMILAR PERIOD?

It is not required that the individual perform the services for the same professional athletic organization for reasonable assurance to exist.

GUIDE SHEET 9 - PROFESSIONAL ATHLETES BETWEEN SEASONS

The claimant's continuing employment relationship with a professional sports team, league or association must be clearly established. It is possible that the claimant decided not to return to work or was released by the employer which would raise a separation issue.

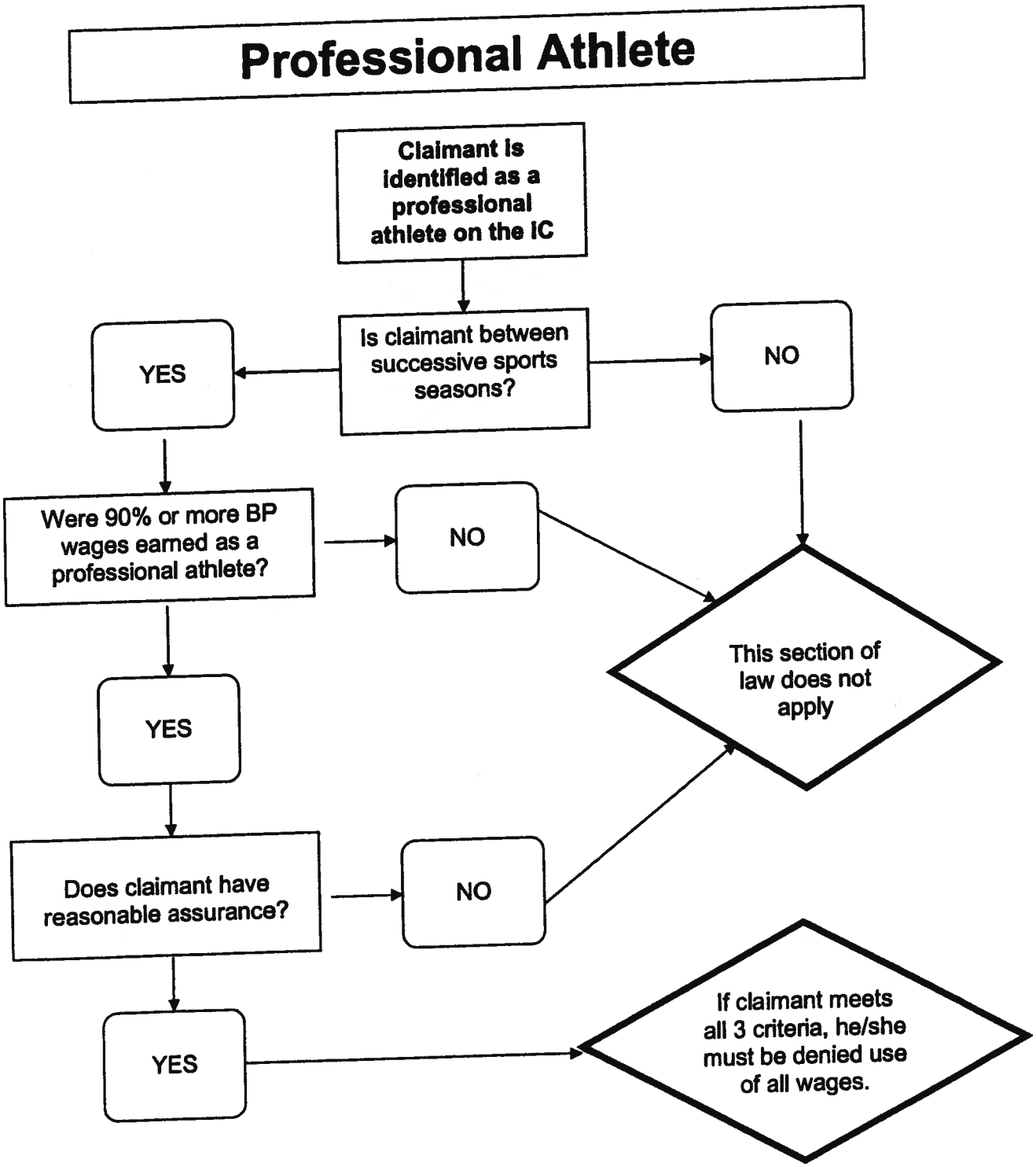
If there is no separation issue, information from the claimant should address his/her understanding about returning to work for the employer during the next sports season, who provided the claimant with assurance of returning the next season and whether that individual was authorized to do so.

It is possible that the individual only had a one-year contract and was released. If, however, the individual is free to negotiate with others for his services, then reasonable assurance is evident if the claimant asserts that he/she is focused on pursuing employment as a professional athlete for the next season or similar period.

If it is clearly established that the individual has withdrawn from professional athletics at the expiration of his/her contract, then reasonable assurance is not present. There is no need to probe further.

HINT: *All states were required to apply the "substantially all" criteria to base period wages. Most states opted to use the 90% amount as defined by Supplement #1 -- Questions and Answers -- which supplemented Draft Language and Commentary to Implement the Unemployment Compensation Amendments of 1976-P.L.-566. A state can choose to be more stringent in defining "substantially all". All evaluators should be aware of the definition before reviewing the case.*

GUIDE SHEET 9 - PROFESSIONAL ATHLETES BETWEEN SEASONS



GUIDE SHEET 10

FRAUD ADMINISTRATIVE PENALTY

GUIDE SHEET 10 – FRAUD ADMINISTRATIVE PENALTY

All states have laws which provide for an additional administrative penalty to be applied when claimants commit fraud by willfully misrepresenting or concealing material facts in order to obtain benefits to which they are not legally entitled. Misrepresentation or concealment of material facts by a claimant commonly relates to unreported earnings, misinformation about employment or separation from employment, availability, ability, efforts to obtain work, dependants, vacation pay, pension, concurrent filing for benefits in two or more states, collusion with an employer on exaggerated or unreported earnings or fictitious employment.

Generally, the most common type of fraud occurs during a continued claims series when the claimant fails to correctly report earnings. These incidents are most frequently detected by the benefit wage crossmatch, interstate benefit (IB) crossmatch, or the directory of new-hire crossmatch. If the adjudicator reviews the information returned by the employer as a result of any type of crossmatch and considers assessing an administrative penalty due to fraud or concealment by the claimant, these determinations should be reported in column 17, lines 301 and 302 of the ET 207 report, Nonmonetary Determination Activities.

BASIC FACTORS AND QUESTIONS TO CONSIDER

A. WHAT WAS THE METHOD OF DETECTION?

There are many methods used to detect potentially fraudulent activity by the claimant. The results may lead to a finding of fraud if the facts establish the claimant willfully misrepresented or concealed material facts in order to obtain benefits to which he/she was not legally entitled. Some of the methods used to detect incorrect information may include:

- Crossmatch programs, (e.g. Directory of New Hire, Benefit Wage, IB)
- Fraud Hotlines
- Tips and Leads from outside sources
- Information from employers or others
- Agency information (e.g., job refusals)

Claimants must be informed about and provided an opportunity to rebut allegations or findings of potential fraud. The claimant must be contacted and the information must be discussed with the claimant (or a reasonable attempt made) before a finding of willful misrepresentation can be made.

B. WHAT WERE THE CLAIMANTS' ACTIONS?

It is the responsibility of the SWA to inform the claimants of their rights and responsibilities when filing for benefits. At any time during the claims process, a claimant may give information that is later determined to be incorrect. This inaccurate information may be given unintentionally such as when a claimant was given incorrect information by the employer or failed to understand instructions given by the SWA. The reasons should be closely examined by the SWA to determine whether the claimant willfully misrepresented any material facts.

The adjudicator should document everything that was considered in making the determination. For example, the adjudicator may consider and ask questions such as: What is the claimant's educational level? Were there any language barriers? Had the claimant previously filed for benefits? If so, how often and were there any issues on the prior claims? How are claimants given instructions regarding their rights and responsibilities? Are instructions given verbally or mailed in a pamphlet? What information did the SWA provide to the claimant concerning reporting requirements?

All relevant information provided by employers and/or third parties must be considered by adjudicators in making their determination. However, the claimant must be contacted and allowed to rebut any potentially disqualifying information.

***HINT**: All corresponding documentation used in determining fraud must be included in the case file. This includes documents from prior benefit years.*

GUIDE SHEET 11

LABOR DISPUTES

GUIDE SHEET 11 – LABOR DISPUTES

Generally, most states deny unemployment benefits to claimants if they are out of work due to a labor dispute other than a lockout at the place of employment, although state laws and policies vary regarding conditions of eligibility when labor disputes are involved. Some states allow benefits because of a lockout or failure of the employer to conform to the provisions of a labor contract, while others deny benefits for the duration of the dispute regardless of the cause. In almost all states, a denial period is tied to the duration and progress of the dispute.

The circumstances surrounding the dispute must be fully investigated to establish whether the claimant is a member of a striking class of employees; the cause of the dispute, (e.g., an employer's failure to conform to the terms of a labor contract); when the dispute arose, and the duration of the dispute.

If the dispute has ended, information about the length of time the company will need to resume normal operations and the reason for any delay is required to determine the claimant's employment status at the time the dispute ended. For example, the employer may not be able to resume normal operations because of the lead time necessary to prepare or repair equipment (if damages occurred during the dispute), thus causing a lack of work situation. Investigation of the impact of the dispute on operations may be a factor in determining the claimant's eligibility for benefits, depending on the time benefits are sought.

State law and policy may provide for the allowance of benefits where a labor dispute is in progress at the claimant's place of employment, but the claimant is not participating in or directly involved in the dispute. This is particularly important if state law and policy prohibits penalizing workers who are locked out of work as a result of the employer's actions.

BASIC QUESTIONS AND FACTORS TO CONSIDER

A. WHAT GROUPS ARE INVOLVED IN THE DISPUTE?

It is necessary to identify who is involved in the dispute, the extent of their involvement, and whether the claimant is a part of any group involved or affected by the labor dispute. This is important when determining who is actively participating in the dispute, and who is unemployed as a result of the dispute through no fault of their own. Some classes of workers may be ready, willing and able to work, but are prevented from doing so because they are locked out of their place of employment as a result of the dispute.

Corroboration of the claimant's status with the employer and the claimant's union should provide sufficient information to establish if the claimant is directly participating in the dispute.

Information about the nature of the dispute, including identification of those directly involved and those adversely affected by the dispute, must be obtained from the claimant, union and employer. The SWA may also need to obtain the facts of the dispute from an independent arbitrator who is leading settlement negotiations.

It is important to determine if the individual is actually participating in the labor dispute. Could the claimant have continued to work or returned to work, except for refusal to cross a picket line set up by another class of workers? What prevented the claimant from returning to work? Was safety a factor? Are there other reasons?

B. WHEN DID THE DISPUTE BEGIN?

The date the labor dispute began establishes the duration of any disqualification the state may impose and which must be cited in the determination.

C. WHAT WAS THE CLAIMANT'S EMPLOYMENT STATUS AT THE TIME OF THE DISPUTE?

It is important to know if the labor dispute was the cause of the claimant's unemployment or if the claimant was in a period of unemployment at the time the labor dispute began.

If the claimant was in an indefinite layoff status at the time of the dispute then he/she may not be subject to disqualification because his/her unemployment is not related to the labor dispute.

If the claimant had a definite date of recall, was recalled by the employer during the labor dispute, but refused to report, a separation issue may exist requiring resolution under state separation provisions.

D. WHAT IS THE REASON FOR THE LABOR DISPUTE?

Because most states have adopted the principle of neutrality in labor disputes, disqualifications may be perfunctory, with benefits denied for the duration of the dispute. If this is the case, then the issuance of determinations is a fairly routine matter not requiring a great deal of inquiry. The state's statutory provisions are applied uniformly, the denial

is issued and no further inquiry is required. However, some states have specific exceptions to the neutrality principle and permit the allowance of benefits under certain conditions.

Some states allow benefits in cases of a lockout to avoid penalizing certain employees for the actions of the employer, for the employer's failure to abide by the terms of a labor contract, and when the employer failed to conform to any Federal or state law on labor standards matters which are central to the labor dispute such as wages, hours, or working conditions. Facts must be obtained from the interested parties such as claimant, employer, and bargaining unit (if applicable), or other third parties to establish if any of the above conditions exist.

The weight of the evidence obtained in conjunction with applicable with applicable state and Federal labor standards shall provide the basis for evaluating the quality of labor dispute determinations.

E. WHAT EMPLOYMENT LOCATIONS ARE INVOLVED IN THE DISPUTE?

Identifying the location of the dispute is important to establish whether it directly affects the claimant's place of employment. The dispute may occur at a remote location, but render the claimant's facility inoperable or diminish operations causing the claimant's unemployment.

The relationship of the dispute to the operations of the claimant's place of employment must be probed because the claimant may belong to the same class of employees whose actions at one location are causing disruptions in operations at other employer locations. State law or policy dictates if the labor dispute determinations reach beyond the immediate location affected to include any establishment within the United States which is functionally dependent or integrated with the striking facility owned by the same employing unit. To establish the effect of the labor dispute on operations in the claimant's place of employment determine if there was a forced slowdown/shutdown of operations; a reduction in force; or if non-labor dispute participants were adversely affected?

F. IS THE CLAIMANT FINANCING OR DIRECTLY INTERESTED IN THE LABOR DISPUTE?

Many states deny benefits to any individuals or classes of workers who are actively engaged in the labor dispute or are financing or otherwise directly interested in the dispute. Facts obtained from the claimant (or the claimant's agent if he/she belongs to a collective bargaining unit) will establish whether the claimant falls in any of these categories.

The claimant's bargaining unit, although not directly involved in the labor dispute, may be subsidizing one or the other parties in the dispute. In most cases this is in the form of a financial contribution from the claimant's union to the striking union. The intent is to build support for the claimant's bargaining unit which also has a collective bargaining agreement with the same employer. By offering such financial support, paid through the claimant's union dues or other assessments, a direct interest in the outcome of the dispute is exhibited (a self-serving act which may serve to prolong the labor dispute).

GUIDE SHEET 12

WORKER PROFILING AND REMPLOYMENT SERVICES

GUIDE SHEET 12 - WORKER PROFILING AND REEMPLOYMENT SERVICES

Title III of the Social Security Act, amended in November 1993 by Public Law 103-152, requires that all states establish and utilize a system of profiling all new claimants for unemployment compensation that identifies those who will likely exhaust their benefits and who will need job search assistance services to make a successful transition to new employment.

Under this system, identified claimants may be referred to reemployment services which include job search assistance, job placement services, counseling, testing, providing occupational and labor market information, assessment, job search workshops, job clubs, referrals to employers, and other similar services.

Familiarity with Unemployment Insurance Program Letter No. 41-94 dated August 16, 1994, as well as state law and policy is necessary to properly evaluate Worker Profiling and Reemployment Services (WPRS) determinations.

Claimants must be held ineligible for any week in which there is a failure to participate in reemployment services which they are required to attend unless they: (1) have justifiable cause, (2) have completed such services or, (3) are attending similar services.

Justifiable cause for refusal to participate in reemployment services or similar services is determined by the "reasonable person" test. The justifiable cause exception does not supersede state able and available provisions, e.g., a claimant's illness may be justifiable cause for not accepting referral to reemployment services, but, will raise the issue of eligibility under the able and available provisions of state law.

Claimants should not be held ineligible if the failure to participate is minimal and does not significantly affect their ability to benefit from the reemployment services in attempting to obtain new work, e.g., if a claimant misses one hour of an eight-hour seminar, the state may find that this limited absence is not a failure to participate.

Claimants who have completed reemployment services are not required to participate in such services and, therefore, should not be held ineligible. This includes "similar services." The date of completion should be considered in arriving at a decision of justifiable cause for refusal to participate.

Claimants are not required to participate in reemployment services to which they are referred if they are participating in "similar services." These are defined as reemployment services that claimants are attending on their own initiative, e.g.,

services offered by a company prior to a permanent layoff, or services offered by private employment agencies. These services need not be identical to those to which the claimant was referred by the state; they need only be reasonably similar. The SWA must perform sufficient fact-finding to determine if, in fact, the services are similar.

The SWA also bears the responsibility to determine whether the referral is proper if the claimant questions the need for reemployment services.

BASIC QUESTIONS AND FACTORS TO CONSIDER

A. HOW WAS THE CLAIMANT NOTIFIED AND WHAT WAS THE CONTENT OF THE NOTICE?

The claimant must be notified in writing of the referral and advised of the following: (1) that he/she has been identified as likely to need reemployment services in order to make a successful transition to new employment; (2) when and where to report for the services; and, (3) that failure to participate in reemployment services may result in denial of UI benefits. If the SWA does not conform to all of the above requirements, there is no issue. Documentation must reflect the method by which the claimant was notified.

HINT: *There is no issue if the SWA or the SWA's designated service provider does not include required information in the call-in notice to claimant.*

B. WHAT WAS THE REASON(S) FOR THE CLAIMANT'S REFUSAL?

If the claimant refused because of prior completion of reemployment services, obtain written documentation of such completion. How recently did the claimant complete the services? Has the claimant recently completed, or is the claimant currently participating in, similar services? Determine if the similar services were of sufficient quality to be acceptable in lieu of this referral. Also, determine the date of completion.

C. WAS THE REASON FOR REFUSAL CONTROLLABLE OR UNCONTROLLABLE?

It should be determined whether the claimant's reason(s) for refusing services were within his/her control. If the reason(s) is within the claimant's control, what efforts did the claimant make to resolve the controllable reason?

GUIDE SHEET 13

UNEMPLOYMENT STATUS

GUIDE SHEET 13 – UNEMPLOYMENT STATUS

A determination is necessary if there is a question on whether the claimant's activities constitute employment, or if the claimant received remuneration for employment sufficient to render him/her ineligible as "not unemployed" or "partially unemployed. "

HINT: This category does not include payments of workers compensation, OASDI benefits, unemployment benefits under another state or Federal law, dismissal payments of wages in lieu of notice, vacation or holiday pay, and payments made under an employer's pension plan as these issues are determined as Disqualifying Income Issues.

BASIC QUESTIONS AND FACTORS TO CONSIDER

A. WHAT TYPE OF INCOME DID THE CLAIMANT RECEIVE?

The type of income the claimant received or will receive (wages, remuneration) and the period to which it is applicable must be recorded during the factfinding process. This will help determine the week(s) affected and the deduction from the claimant's weekly benefit amount.

Determine the specific type of income received or considered to be constructively received by the claimant:

- Although not yet paid to the claimant by the employer, a determination has to be made if the income meets the state definition for deductibility and/or disqualification for the weeks affected.
- The SWA must determine if the income is based on employment or if the income is from an employer's pension plan, disability plan, Social Security, etc. to establish the appropriate method for reducing the claimant's WBA.
- The type of income determines the formula the state applies for reducing the claimant's weekly benefit amount (WBA). In many states, if payment is less than the WBA (based on a percentage of earnings that is disregarded), the claimant receives the difference between the amount deducted (after the disregard) and the WBA.
- In others, a dollar-for-dollar reduction may apply, or no benefits are payable if the claimant receives disqualifying income regardless of the amount.

B. WHAT IS THE GROSS AMOUNT OF INCOME THE CLAIMANT RECEIVED?

The gross amount of income received is used to determine its impact on the claimant's WBA - present, past, or future.

- Lump sum payments can represent different types of income.
- Lump sum payments may be applied only to the week in which the payment was received, or
- May be considered periodic payments, applying the prorated amount to several weeks.

It will be necessary to determine, based on the amount actually received or, in some cases the "constructively received," the weeks to which the income is applicable and the amount of reduction required by law and policy.

- Obtain documentation or verification from the claimant and/or the employer of the gross amount of income.
- Once the sources are identified and the information is confirmed, a determination can be issued to wholly or partially reduce the claimant's benefit award in accordance with state law and policy.