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Title 22@ Social Security

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Division 1@ Employment Development Department

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Subdivision 1@ Director of Employment Development

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Division 1@ Unemployment and Disability Compensation

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Part 1@ Unemployment Compensation

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Chapter 5@ UNEMPLOYMENT COMPENSATION BENEFITS

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Article 3@ FILING, DETERMINATION, AND PAYMENT OF UNEMPLOYMENT COMPENSATION BENEFIT CLAIMS

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Section 1326-12@ Payment of Unemployment Compensation Benefits Appeal by Claimant

1326-12 Payment of Unemployment Compensation

Benefits Appeal by Claimant

(a)

Scope. This section interprets whether unemployment compensation benefit payments continue in situations where the department determines a claimant is initially eligible for benefits, but subsequently determines the claimant is ineligible or disqualified for benefits for further weeks, and the claimant files an appeal from the subsequent determination.

(b)

General. If the department finally determines that a claimant is initially eligible for benefits, subsequently determines that the claimant is ineligible or disqualified or subject to a reduction of further benefits, and the claimant files a timely appeal from the subsequent determination, within 20 days pursuant to Unemployment Insurance Code Section 1328, and a written election with the department on a prescribed form "Notice of Right to Receive Benefits Pending Appeal" DE Form 63155 CC Rev. 3: 6/86) to have benefits continued and files continued claims pending disposition of the appeal, the department shall continue to pay benefits until the appeal has been resolved by the decision of an administrative law judge, except that benefit payments shall cease if the appeal is dismissed or if a criminal complaint for fraud is filed against the claimant under Section 2101 of the code.

(c)

Claimant Finally Determined Initially Eligible. The department has finally determined that a claimant is initially eligible for benefits if, after the filing of a new or additional claim, the department determines that all of the following conditions exist: (1) The claimant is unemployed. (2) The claimant has filed a claim in accordance with authorized regulations, which appear in Title 22, California Code of Regulations, Division 1, Part 1, Chapter 5, Article 3. (3) The claimant has a monetarily valid claim. (4) The claimant has not exhausted the maximum benefit amount for the benefit year of the claim. (5) The claimant is otherwise eligible. (6) The initial determination is not subject to reconsideration under Section 1256.1, 1332, or 1332.5 of the code.

(1)

The claimant is unemployed.

(2)

The claimant has filed a claim in accordance with authorized regulations, which appear in Title 22, California Code of Regulations, Division 1, Part 1, Chapter 5, Article 3.

(3)

The claimant has a monetarily valid claim.

(4)

The claimant has not exhausted the maximum benefit amount for the benefit year of the claim.

(5)

The claimant is otherwise eligible.

(6)

The initial determination is not subject to reconsideration under Section 1256.1, 1332, or 1332.5 of the code.

(d)

Factors Making Claimant Ineligible. A claimant is not eligible for benefits for any period for which the department determines that at the time the claimant was otherwise eligible any of the following conditions exist: (1) There has been no wage loss because of: (A) The receipt of residuals or rerun payments (see Sections 678, 926 and 926.5 of the code). (B) Commissions (see Section 926 of the code). (C) Wages as a fisherman for fish previously caught (see Section 1252.1 and 1252.2 of the code). (2) The extent to which benefits are offset against an overpayment of unemployment compensation benefits previously paid under the code if the overpayment determination is final (see Section 1379 of the code). (3) The extent to which claimant is entitled to duplicate benefits under: (A) The unemployment compensation law of any other state or of the federal government (see Section 1255 of the code). (B) The workers' compensation law of any state or of the federal government (see Section 1255.5 of the code).

EXAMPLE 1. Claim Filing. Claimant A files a new claim and the department discovers A may not have reported the correct last employer. The department questions A and A agrees that A did not furnish the department with the name and address of the most recent employer and refuses to do so. The department determines A has failed to submit required information and holds A ineligible because A has not filed a valid claim in accordance with subdivision (b) of Section 1326-2 of these regulations. Claimant A appeals. Since A has not complied with department regulations, the department has not finally determined that A is initially eligible. A does not have the right to receive benefits pending decision on the appeal.

EXAMPLE 2. Claim Filing. On July 7 Claimant B files a new claim with an effective date of July 6 and is paid benefits. Two weeks later B requests the department to backdate the claim to the week beginning June 8. The department determines there is no good cause for backdating and denies B's request. B appeals. The department has not finally

determined that B was initially eligible for the weeks for which B requested backdating (weeks ending June 14, 21, 28 and July 5). Therefore, pending decision on the appeal, B is not entitled to receive payment for any of the four weeks prior to July 6. The weeks after July 5 are not affected by the backdating issue raised by B's appeal, and B is entitled to continued payment of benefits for the weeks after July 5.

EXAMPLE 3. Claim Filing. The department determines that Claimant C is initially eligible for benefits. C receives benefits for several weeks and then fails to mail in continued claim cards for four weeks. Subsequently C files claims for those four weeks. The department does not determine C was unavailable for work during those weeks. However, it does determine that C has no good cause for the delay in filing the continued claim cards and is therefore ineligible for the four weeks under subdivision (a) of Section 1253 of the code because the continued claims were not filed timely in accordance with department regulations. C appeals. Since the department has finally determined that C was initially eligible, C is entitled to receive benefits for the four weeks in question pending decision on the appeal.

EXAMPLE 4. Claim Filing. Same facts as Example 3 above, except that the department determines that Claimant D has continuing good cause for late reporting for the four weeks. However, unlike Example 3, the department also determines that D was unavailable for work for those four weeks because D went to another state for a vacation. D appeals. Since the department has finally determined that D was initially eligible for the four weeks, D is entitled to continued payment of benefits pending decision on the appeal.

EXAMPLE 5.

Availability. Claimant E is laid off for lack of work, files a new claim, and is paid benefits for several weeks. E then advises the department E is no longer seeking any work because E has a relative who may start a business and employ E. The department determines that E is ineligible as being unavailable for work and not

seeking work. E appeals. Since the department has finally determined that E was initially eligible for benefits, E is entitled to continued payment of benefits pending decision on the appeal. EXAMPLE 6. Availability. Claimant F quit with good cause because F's employer moved the business to a distant location beyond F's commuting distance. F enrolls in school and attends classes Monday through Friday. There is no substantial field of employment available to F during nonschool hours. F files a claim for benefits. The department determines that F is ineligible on the ground of unavailability for work. F appeals. Since the department has not finally determined that F was initially eligible, F is not entitled to receive benefits pending decision on the appeal. F's unavailability existed at the time of the filing of the claim and continued into one or more of the weeks of benefits claimed.

EXAMPLE 7. Availability. Claimant G files a new claim but does not report to the department for the initial eligibility review and does not certify for any benefits. Several months later G, who has had no intervening employment, requests the department to reopen the claim. Since G is now residing in a remote area where there is no substantial labor market, the department determines that G is unavailable for work. G appeals. Since the department has not previously finally determined that G was initially eligible, G is not entitled to receive benefits pending decision on the appeal. EXAMPLE 8. Wages. Claimant H files an additional claim immediately following layoff from an employer who paid three weeks in lieu of notice pay at termination. The department disqualifies H on the ground the payment renders him fully employed for the three weeks. H appeals. Since the department has not finally determined H was initially eligible, H is not entitled to receive benefits pending decision on the appeal. EXAMPLE 9. Wages. Claimant I files a new claim. The department learns that I is currently fully employed and disqualifies I. I appeals. To be eligible for benefits, I must be unemployed. Since I's

claim is not valid, and I has not been finally determined to be initially eligible, I is not entitled to receive benefits pending decision on the appeal. EXAMPLE 10.

Wages. Claimant J, an ex-serviceman, establishes a new claim and receives several weeks of benefits before beginning work as an automobile salesman. When J subsequently certifies for benefits, J indicates receipt of \$200 in earnings for each of those weeks. As the earnings, when reduced by \$25 or 25%, equaled or exceeded the weekly benefit amount, J is held ineligible under Section 1279 of the code. J appeals. J is entitled to be paid benefits pending decision on the appeal as J was finally determined to be initially eligible upon the filing of the new claim and has remained in continued claim status. EXAMPLE 11. School Employee. Claimant

K is a tenured teacher whose employment ended in June, following the end of the school semester. K files a new claim in June. The claim is based entirely on K's school wages. K has reasonable assurance of returning to the same position in September. The department determines that K is ineligible during the summer recess period under Section 1253.3 of the code. K appeals. Since the department has not finally determined that K was initially eligible, K is not entitled to receive benefits pending decision on the appeal. EXAMPLE 12. School Employee. Claimant

L, a teacher, last worked in June and became unemployed at the end of the school year. Claimant L filed a new claim based entirely on school wages. Claimant L has no reasonable assurance of returning to school for the fall semester. The department determines that L is eligible for benefits under Section 1253.3 of the code. Claimant L receives benefits for four weeks and on August 1 receives a contract from the school to return to work in the fall. The department determines that L is ineligible for further benefits commencing August 1 because L now has reasonable assurance of returning to work in the fall. L appeals. Since the department has finally determined that L was initially eligible, L is entitled to

continued payment of benefits pending decision on the appeal of the subsequent determination of ineligibility. EXAMPLE 13. Separation. Claimant M quits work to attend to personal affairs. The department determines that M quit without good cause and disqualifies M for benefits. M appeals. Since the department has not finally determined that M was initially eligible, M does not have the right to receive benefits pending decision on the appeal. EXAMPLE 14. Separation. Claimant N, a carpenter, who was laid off for lack of work, filed for and received six weeks of benefits. Then N obtained a new job, worked one day and quit that job without good cause. N files another claim and the department determines that N is disqualified as having quit without good cause. N appeals. Since the department has finally determined that N was initially eligible and would, but for the quit, remain eligible, N is entitled to continued payment of benefits pending decision on the appeal. EXAMPLE 15. Separation--Incarceration. Claimant O's employer terminates O because of O's absence from work for one week due to O's incarceration. O files a claim for benefits. O has not yet entered any plea in criminal court nor been convicted of the act for which O was incarcerated. The department determines that O is eligible under Section 1256.1 of the code pending the outcome of the court case. After receiving benefits for several weeks, O is convicted. Pursuant to Section 1256.1 of the code, the department may and does reconsider its determination and disqualifies O because O voluntarily left the most recent work without good cause. O appeals. Since, under Section 1256.1 of the code the department has not finally determined that O was initially eligible and may reconsider the determination, O is not entitled to continued payment of benefits pending decision on the appeal. EXAMPLE 16. False Statement. Claimant P is in continued claim status and drawing benefits when the department, as a result of a benefit audit, learns that P drew benefits on a prior claim while working and

that when P filed the prior claim P had, with actual knowledge, falsely stated that P was not working. The department disqualifies P for a false statement on the prior claim. P appeals. Since the department has finally determined that P was initially eligible on the current claim, P is entitled to continued payment of benefits pending decision on the appeal of the false statement disqualification. EXAMPLE 17. False Statement. Claimant Q, a stenographer, files an additional claim indicating to the department that Q was laid off due to lack of work. When Q reports for the first payment, the department has received an employer protest indicating that Q voluntarily quit. After further investigation, the department determines that the quit was for good cause under Section 1256 of the code. However, the department determines that Q withheld material facts concerning the separation and disqualified Q under subdivision (a) of Section 1257 of the code. Q appeals the false statement disqualification. Since Q's quit was under nondisqualifying circumstances, the department has finally determined that Q was initially eligible for the first two weeks of the claim. Since the false statement disqualification does not begin until the week in which it is assessed (the third week of the claim), Q is entitled to continued payment of benefits pending decision on the appeal of the false statement disqualification. EXAMPLE 18. Suitable Work. Claimant R was discharged for inefficiency. The department determines that R is not disqualified as the discharge was for reasons not constituting misconduct. R files a continued claim and subsequently refuses a referral to a job. The department determines that R refused an offer of suitable work without good cause and disqualifies R. R appeals. Since R's discharge was under nondisqualifying circumstances and the department has finally determined that R was initially eligible, R is entitled to continued payment of benefits pending decision on the appeal of the work refusal disqualification. EXAMPLE 19. Suitable

Work. Claimant S, a roofer, is laid off from a job when it is completed. A few days later S's former employer obtains a new contract and recalls S for a permanent full-time job. S refuses the job and files a new claim for benefits the next day. The department disqualifies S for having refused an offer of suitable work. S appeals. Since the department has not finally determined that S was initially eligible because S's refusal of suitable work is the cause of S's unemployment and existed at the time S filed the claim, S does not have the right to receive benefits pending decision on the appeal.

EXAMPLE 20. Trade Dispute. Claimant T, a grocer checker and member of the Retail Clerks Union, voluntarily remains away from work after the union gives a strike notice and establishes a picket line at the premises of T's employer. T files a claim and the department determines that T is ineligible for having voluntarily left work due to a trade dispute. T appeals. Since T became unemployed under disqualifying circumstances and the department has not finally determined that T was initially eligible, T is not entitled to receive benefits pending decision on the appeal.

EXAMPLE 21. Trade Dispute. A group of claimants are in continued claim status and receiving benefits when a trade dispute begins at the fruit processing plant where they had worked during the past season. These claimants are on a seniority list and are members of the striking union. The workers who are still working at the plant go on strike and the employer starts recalling the other workers by seniority. This group of claimants refuses to report for work after having been recalled, and the department determines they voluntarily left their work due to a trade dispute. Each of the claimants in the group files a timely appeal. Since the department has finally determined that each of the claimants was initially eligible as having been laid off for lack of work at the end of the season, each claimant is entitled to continued payment of benefits pending decision on the appeal from the trade dispute disqualification.

EXAMPLE

22. Trade Dispute. Claimant U, a member of the Teamsters Union, leaves work by going on strike against U's employer, a trucking company. U obtains temporary work as a bartender and is laid off after six weeks. U files a new claim listing the bar as the most recent work. The department pays U benefits for three weeks and then ascertains that U was involved in the trade dispute. The department determines U's work as a bartender was temporary, and that U remains unemployed due to the trade dispute and is ineligible. U appeals. Since the department has finally determined that U was initially eligible, U is entitled to continued payment of benefits pending decision on the appeal.

EXAMPLE 23. Trade Dispute. Same facts as Example 22 above, except that the department knows at the time Claimant V files a claim that V became unemployed due to the trade dispute. The department determines that V's intervening temporary work as a bartender was not permanent bona fide employment which would purge the trade dispute disqualification. The department determines that V remains unemployed due to the trade dispute and is ineligible. V appeals. Since the department has finally determined that V was initially ineligible for benefits, rather than initially eligible, V is not entitled to receive any benefits pending decision on the appeal.

EXAMPLE 24. Reconsideration--Department Error. The department makes an error concerning Claimant W's initial eligibility by neglecting to note that W indicated W had quit W's last job for noncompelling reasons. The department determines that W is eligible as having left the job for compelling reasons. The department discovers its error within 20 days of its determination, reconsiders the determination within the 20-day period, and determines that W voluntarily left the work without good cause and is ineligible for benefits. W appeals. Since under Section 1332 of the code the department may reconsider its determination within 20 days and the initial determination was not final, W is not entitled to receive

benefits pending decision on the appeal. EXAMPLE 25.

Reconsideration--Department Error. Same facts as Example 24 above, except that the department discovers its error after 20 days from the time benefits were paid to Claimant X. The department reconsiders and issues a determination that X is ineligible. X appeals. Since the department has finally determined that X was initially eligible, X is entitled to continued payment of benefits pending decision on the appeal.

(1)

There has been no wage loss because of: (A) The receipt of residuals or rerun payments (see Sections 678, 926 and 926.5 of the code). (B) Commissions (see Section 926 of the code). (C) Wages as a fisherman for fish previously caught (see Section 1252.1 and 1252.2 of the code).

(A)

The receipt of residuals or rerun payments (see Sections 678, 926 and 926.5 of the code).

(B)

Commissions (see Section 926 of the code).

(C)

Wages as a fisherman for fish previously caught (see Section 1252.1 and 1252.2 of the code).

(2)

The extent to which benefits are offset against an overpayment of unemployment compensation benefits previously paid under the code if the overpayment determination is final (see Section 1379 of the code).

(3)

The extent to which claimant is entitled to duplicate benefits under: (A) The unemployment compensation law of any other state or of the federal government (see

Section 1255 of the code). (B) The workers' compensation law of any state or of the federal government (see Section 1255.5 of the code). EXAMPLE 1. Claim Filing.

Claimant A files a new claim and the department discovers A may not have reported the correct last employer. The department questions A and A agrees that A did not furnish the department with the name and address of the most recent employer and refuses to do so. The department determines A has failed to submit required information and holds A ineligible because A has not filed a valid claim in accordance with subdivision (b) of Section 1326-2 of these regulations. Claimant A appeals. Since A has not complied with department regulations, the department has not finally determined that A is initially eligible. A does not have the right to receive benefits pending decision on the appeal.

EXAMPLE 2. Claim Filing. On July 7 Claimant B files a new claim with an effective date of July 6 and is paid benefits. Two weeks later B requests the department to backdate the claim to the week beginning June 8. The department determines there is no good cause for backdating and denies B's request. B appeals. The department has not finally determined that B was initially eligible for the weeks for which B requested backdating (weeks ending June 14, 21, 28 and July 5). Therefore, pending decision on the appeal, B is not entitled to receive payment for any of the four weeks prior to July 6.

The weeks after July 5 are not affected by the backdating issue raised by B's appeal, and B is entitled to continued payment of benefits for the weeks after July 5.

EXAMPLE 3. Claim Filing. The department determines that Claimant C is initially eligible for benefits. C receives benefits for several weeks and then fails to mail in continued claim cards for four weeks. Subsequently C files claims for those four weeks. The department does not determine C was unavailable for work during those weeks. However, it does determine that C has no good cause for the delay in filing the continued claim cards and is therefore ineligible for the four weeks under subdivision (a) of Section 1253 of the code because the continued claims were not filed timely in accordance with department

regulations. C appeals. Since the department has finally determined that C was initially eligible, C is entitled to receive benefits for the four weeks in question pending decision on the appeal.

EXAMPLE 4. Claim Filing. Same facts as Example 3 above, except that the department determines that Claimant D has continuing good cause for late reporting for the four weeks. However, unlike Example 3, the department also determines that D was unavailable for work for those four weeks because D went to another state for a vacation. D appeals. Since the department has finally determined that D was initially eligible for the four weeks, D is entitled to continued payment of benefits pending decision on the appeal.

EXAMPLE 5. Availability. Claimant E is laid off for lack of work, files a new claim, and is paid benefits for several weeks. E then advises the department E is no longer seeking any work because E has a relative who may start a business and employ E. The department determines that E is ineligible as being unavailable for work and not seeking work. E appeals. Since the department has finally determined that E was initially eligible for benefits, E is entitled to continued payment of benefits pending decision on the appeal.

EXAMPLE 6. Availability. Claimant F quit with good cause because F's employer moved the business to a distant location beyond F's commuting distance. F enrolls in school and attends classes Monday through Friday. There is no substantial field of employment available to F during nonschool hours. F files a claim for benefits. The department determines that F is ineligible on the ground of unavailability for work. F appeals. Since the department has not finally determined that F was initially eligible, F is not entitled to receive benefits pending decision on the appeal. F's unavailability existed at the time of the filing of the claim and continued into one or more of the weeks of benefits claimed.

EXAMPLE 7. Availability. Claimant G files a new claim but does not report to the department for the initial eligibility review and does not certify for any benefits. Several months later G, who has had no intervening employment, requests the department to reopen the claim.

Since G is now residing in a remote area where there is no substantial labor market, the department determines that G is unavailable for work. G appeals. Since the department has not previously finally determined that G was initially eligible, G is not entitled to receive benefits pending decision on the appeal.

EXAMPLE 8. Wages. Claimant H files an additional claim immediately following layoff from an employer who paid three weeks in lieu of notice pay at termination. The department disqualifies H on the ground the payment renders him fully employed for the three weeks. H appeals. Since the department has not finally determined H was initially eligible, H is not entitled to receive benefits pending decision on the appeal.

EXAMPLE 9. Wages. Claimant I files a new claim. The department learns that I is currently fully employed and disqualifies I. I appeals. To be eligible for benefits, I must be unemployed. Since I's claim is not valid, and I has not been finally determined to be initially eligible, I is not entitled to receive benefits pending decision on the appeal.

EXAMPLE 10. Wages. Claimant J, an ex-serviceman, establishes a new claim and receives several weeks of benefits before beginning work as an automobile salesman. When J subsequently certifies for benefits, J indicates receipt of \$200 in earnings for each of those weeks. As the earnings, when reduced by \$25 or 25%, equaled or exceeded the weekly benefit amount, J is held ineligible under Section 1279 of the code. J appeals. J is entitled to be paid benefits pending decision on the appeal as J was finally determined to be initially eligible upon the filing of the new claim and has remained in continued claim status.

EXAMPLE 11. School Employee. Claimant K is a tenured teacher whose employment ended in June, following the end of the school semester. K files a new claim in June. The claim is based entirely on K's school wages. K has reasonable assurance of returning to the same position in September. The department determines that K is ineligible during the summer recess period under Section 1253.3 of the code. K appeals. Since the department has not finally determined that K was initially eligible, K is not entitled to

receive benefits pending decision on the appeal. EXAMPLE 12. School Employee.

Claimant L, a teacher, last worked in June and became unemployed at the end of the school year. Claimant L filed a new claim based entirely on school wages. Claimant L has no reasonable assurance of returning to school for the fall semester. The department determines that L is eligible for benefits under Section 1253.3 of the code. Claimant L receives benefits for four weeks and on August 1 receives a contract from the school to return to work in the fall. The department determines that L is ineligible for further benefits commencing August 1 because L now has reasonable assurance of returning to work in the fall. L appeals. Since the department has finally determined that L was initially eligible, L is entitled to continued payment of benefits pending decision on the appeal of the subsequent determination of ineligibility. EXAMPLE 13.

Separation. Claimant M quits work to attend to personal affairs. The department determines that M quit without good cause and disqualifies M for benefits. M appeals. Since the department has not finally determined that M was initially eligible, M does not have the right to receive benefits pending decision on the appeal. EXAMPLE 14.

Separation. Claimant N, a carpenter, who was laid off for lack of work, filed for and received six weeks of benefits. Then N obtained a new job, worked one day and quit that job without good cause. N files another claim and the department determines that N is disqualified as having quit without good cause. N appeals. Since the department has finally determined that N was initially eligible and would, but for the quit, remain eligible, N is entitled to continued payment of benefits pending decision on the appeal.

EXAMPLE 15. Separation--Incarceration. Claimant O's employer terminates O because of O's absence from work for one week due to O's incarceration. O files a claim for benefits. O has not yet entered any plea in criminal court nor been convicted of the act for which O was incarcerated. The department determines that O is eligible under Section 1256.1 of the code pending the outcome of the court case. After receiving

benefits for several weeks, O is convicted. Pursuant to Section 1256.1 of the code, the department may and does reconsider its determination and disqualifies O because O voluntarily left the most recent work without good cause. O appeals. Since, under Section 1256.1 of the code the department has not finally determined that O was initially eligible and may reconsider the determination, O is not entitled to continued payment of benefits pending decision on the appeal. EXAMPLE 16. False Statement.

Claimant P is in continued claim status and drawing benefits when the department, as a result of a benefit audit, learns that P drew benefits on a prior claim while working and that when P filed the prior claim P had, with actual knowledge, falsely stated that P was not working. The department disqualifies P for a false statement on the prior claim. P appeals. Since the department has finally determined that P was initially eligible on the current claim, P is entitled to continued payment of benefits pending decision on the appeal of the false statement disqualification. EXAMPLE 17. False Statement. Claimant Q, a stenographer, files an additional claim indicating to the department that Q was laid off due to lack of work. When Q reports for the first payment, the department has received an employer protest indicating that Q voluntarily quit. After further investigation, the department determines that the quit was for good cause under Section 1256 of the code. However, the department determines that Q withheld material facts concerning the separation and disqualified Q under subdivision (a) of Section 1257 of the code. Q appeals the false statement disqualification. Since Q's quit was under nondisqualifying circumstances, the department has finally determined that Q was initially eligible for the first two weeks of the claim. Since the false statement disqualification does not begin until the week in which it is assessed (the third week of the claim), Q is entitled to continued payment of benefits pending decision on the appeal of the false statement disqualification. EXAMPLE 18. Suitable Work. Claimant R was discharged for inefficiency. The department determines that R is not disqualified as

the discharge was for reasons not constituting misconduct. R files a continued claim and subsequently refuses a referral to a job. The department determines that R refused an offer of suitable work without good cause and disqualifies R. R appeals. Since R's discharge was under nondisqualifying circumstances and the department has finally determined that R was initially eligible, R is entitled to continued payment of benefits pending decision on the appeal of the work refusal disqualification. EXAMPLE 19.

Suitable Work. Claimant S, a roofer, is laid off from a job when it is completed. A few days later S's former employer obtains a new contract and recalls S for a permanent full-time job. S refuses the job and files a new claim for benefits the next day. The department disqualifies S for having refused an offer of suitable work. S appeals. Since the department has not finally determined that S was initially eligible because S's refusal of suitable work is the cause of S's unemployment and existed at the time S filed the claim, S does not have the right to receive benefits pending decision on the appeal.

EXAMPLE 20. Trade Dispute. Claimant T, a grocer checker and member of the Retail Clerks Union, voluntarily remains away from work after the union gives a strike notice and establishes a picket line at the premises of T's employer. T files a claim and the department determines that T is ineligible for having voluntarily left work due to a trade dispute. T appeals. Since T became unemployed under disqualifying circumstances and the department has not finally determined that T was initially eligible, T is not entitled to receive benefits pending decision on the appeal. EXAMPLE 21. Trade Dispute. A group

of claimants are in continued claim status and receiving benefits when a trade dispute begins at the fruit processing plant where they had worked during the past season. These claimants are on a seniority list and are members of the striking union. The workers who are still working at the plant go on strike and the employer starts recalling the other workers by seniority. This group of claimants refuses to report for work after having been recalled, and the department determines they voluntarily left their work

due to a trade dispute. Each of the claimants in the group files a timely appeal. Since the department has finally determined that each of the claimants was initially eligible as having been laid off for lack of work at the end of the season, each claimant is entitled to continued payment of benefits pending decision on the appeal from the trade dispute disqualification.

EXAMPLE 22. Trade Dispute. Claimant U, a member of the Teamsters Union, leaves work by going on strike against U's employer, a trucking company. U obtains temporary work as a bartender and is laid off after six weeks. U files a new claim listing the bar as the most recent work. The department pays U benefits for three weeks and then ascertains that U was involved in the trade dispute. The department determines U's work as a bartender was temporary, and that U remains unemployed due to the trade dispute and is ineligible. U appeals. Since the department has finally determined that U was initially eligible, U is entitled to continued payment of benefits pending decision on the appeal.

EXAMPLE 23. Trade Dispute. Same facts as Example 22 above, except that the department knows at the time Claimant V files a claim that V became unemployed due to the trade dispute. The department determines that V's intervening temporary work as a bartender was not permanent bona fide employment which would purge the trade dispute disqualification. The department determines that V remains unemployed due to the trade dispute and is ineligible. V appeals. Since the department has finally determined that V was initially ineligible for benefits, rather than initially eligible, V is not entitled to receive any benefits pending decision on the appeal.

EXAMPLE 24. Reconsideration--Department Error. The department makes an error concerning Claimant W's initial eligibility by neglecting to note that W indicated W had quit W's last job for noncompelling reasons. The department determines that W is eligible as having left the job for compelling reasons. The department discovers its error within 20 days of its determination, reconsiders the determination within the 20-day period, and determines that W voluntarily left the work without good cause and is

ineligible for benefits. W appeals. Since under Section 1332 of the code the department may reconsider its determination within 20 days and the initial determination was not final, W is not entitled to receive benefits pending decision on the appeal. EXAMPLE 25. Reconsideration--Department Error. Same facts as Example 24 above, except that the department discovers its error after 20 days from the time benefits were paid to Claimant X. The department reconsiders and issues a determination that X is ineligible. X appeals. Since the department has finally determined that X was initially eligible, X is entitled to continued payment of benefits pending decision on the appeal.

(A)

The unemployment compensation law of any other state or of the federal government (see Section 1255 of the code).

(B)

The workers' compensation law of any state or of the federal government (see Section 1255.5 of the code). EXAMPLE 1. Claim Filing. Claimant A files a new claim and the department discovers A may not have reported the correct last employer. The department questions A and A agrees that A did not furnish the department with the name and address of the most recent employer and refuses to do so. The department determines A has failed to submit required information and holds A ineligible because A has not filed a valid claim in accordance with subdivision (b) of Section 1326-2 of these regulations. Claimant A appeals. Since A has not complied with department regulations, the department has not finally determined that A is initially eligible. A does not have the right to receive benefits pending decision on the appeal. EXAMPLE 2. Claim Filing. On July 7 Claimant B files a new claim with an effective date of July 6 and is paid benefits. Two weeks later B requests the department to backdate the claim to the week beginning June 8. The department determines there is no good cause for backdating and denies B's request. B appeals. The department has not finally determined that B was initially eligible for the weeks for which B requested backdating (weeks

ending June 14, 21, 28 and July 5). Therefore, pending decision on the appeal, B is not entitled to receive payment for any of the four weeks prior to July 6. The weeks after July 5 are not affected by the backdating issue raised by B's appeal, and B is entitled to continued payment of benefits for the weeks after July 5.

EXAMPLE 3. Claim Filing. The department determines that Claimant C is initially eligible for benefits. C receives benefits for several weeks and then fails to mail in continued claim cards for four weeks. Subsequently C files claims for those four weeks. The department does not determine C was unavailable for work during those weeks. However, it does determine that C has no good cause for the delay in filing the continued claim cards and is therefore ineligible for the four weeks under subdivision (a) of Section 1253 of the code because the continued claims were not filed timely in accordance with department regulations. C appeals. Since the department has finally determined that C was initially eligible, C is entitled to receive benefits for the four weeks in question pending decision on the appeal.

EXAMPLE 4. Claim Filing. Same facts as Example 3 above, except that the department determines that Claimant D has continuing good cause for late reporting for the four weeks. However, unlike Example 3, the department also determines that D was unavailable for work for those four weeks because D went to another state for a vacation. D appeals. Since the department has finally determined that D was initially eligible for the four weeks, D is entitled to continued payment of benefits pending decision on the appeal.

EXAMPLE 5. Availability. Claimant E is laid off for lack of work, files a new claim, and is paid benefits for several weeks. E then advises the department E is no longer seeking any work because E has a relative who may start a business and employ E. The department determines that E is ineligible as being unavailable for work and not seeking work. E appeals. Since the department has finally determined that E was initially eligible for benefits, E is entitled to continued payment of benefits pending decision on the appeal.

EXAMPLE 6. Availability. Claimant F quit with good cause because F's employer moved the business to a distant location beyond F's commuting distance. F enrolls in school and attends classes

Monday through Friday. There is no substantial field of employment available to F during nonschool hours. F files a claim for benefits. The department determines that F is ineligible on the ground of unavailability for work. F appeals. Since the department has not finally determined that F was initially eligible, F is not entitled to receive benefits pending decision on the appeal. F's unavailability existed at the time of the filing of the claim and continued into one or more of the weeks of benefits claimed.

EXAMPLE 7. Availability. Claimant G files a new claim but does not report to the department for the initial eligibility review and does not certify for any benefits. Several months later G, who has had no intervening employment, requests the department to reopen the claim. Since G is now residing in a remote area where there is no substantial labor market, the department determines that G is unavailable for work. G appeals. Since the department has not previously finally determined that G was initially eligible, G is not entitled to receive benefits pending decision on the appeal.

EXAMPLE 8. Wages. Claimant H files an additional claim immediately following layoff from an employer who paid three weeks in lieu of notice pay at termination. The department disqualifies H on the ground the payment renders him fully employed for the three weeks. H appeals. Since the department has not finally determined H was initially eligible, H is not entitled to receive benefits pending decision on the appeal.

EXAMPLE 9. Wages. Claimant I files a new claim. The department learns that I is currently fully employed and disqualifies I. I appeals. To be eligible for benefits, I must be unemployed. Since I's claim is not valid, and I has not been finally determined to be initially eligible, I is not entitled to receive benefits pending decision on the appeal.

EXAMPLE 10. Wages. Claimant J, an ex-serviceman, establishes a new claim and receives several weeks of benefits before beginning work as an automobile salesman. When J subsequently certifies for benefits, J indicates receipt of \$200 in earnings for each of those weeks. As the earnings, when reduced by \$25 or 25%, equaled or exceeded the weekly benefit amount, J is held ineligible under Section 1279 of the code. J appeals. J is entitled to be paid benefits pending decision on the appeal as J was finally determined to be initially eligible

upon the filing of the new claim and has remained in continued claim status. EXAMPLE 11. School Employee. Claimant K is a tenured teacher whose employment ended in June, following the end of the school semester. K files a new claim in June. The claim is based entirely on K's school wages. K has reasonable assurance of returning to the same position in September. The department determines that K is ineligible during the summer recess period under Section 1253.3 of the code. K appeals. Since the department has not finally determined that K was initially eligible, K is not entitled to receive benefits pending decision on the appeal. EXAMPLE 12. School Employee. Claimant L, a teacher, last worked in June and became unemployed at the end of the school year. Claimant L filed a new claim based entirely on school wages. Claimant L has no reasonable assurance of returning to school for the fall semester. The department determines that L is eligible for benefits under Section 1253.3 of the code. Claimant L receives benefits for four weeks and on August 1 receives a contract from the school to return to work in the fall. The department determines that L is ineligible for further benefits commencing August 1 because L now has reasonable assurance of returning to work in the fall. L appeals. Since the department has finally determined that L was initially eligible, L is entitled to continued payment of benefits pending decision on the appeal of the subsequent determination of ineligibility. EXAMPLE 13. Separation. Claimant M quits work to attend to personal affairs. The department determines that M quit without good cause and disqualifies M for benefits. M appeals. Since the department has not finally determined that M was initially eligible, M does not have the right to receive benefits pending decision on the appeal. EXAMPLE 14. Separation. Claimant N, a carpenter, who was laid off for lack of work, filed for and received six weeks of benefits. Then N obtained a new job, worked one day and quit that job without good cause. N files another claim and the department determines that N is disqualified as having quit without good cause. N appeals. Since the department has finally determined that N was initially eligible and would, but for the quit, remain eligible, N is entitled to continued payment of benefits pending decision on the appeal. EXAMPLE 15.

Separation--Incarceration. Claimant O's employer terminates O because of O's absence from work for one week due to O's incarceration. O files a claim for benefits. O has not yet entered any plea in criminal court nor been convicted of the act for which O was incarcerated. The department determines that O is eligible under Section 1256.1 of the code pending the outcome of the court case. After receiving benefits for several weeks, O is convicted. Pursuant to Section 1256.1 of the code, the department may and does reconsider its determination and disqualifies O because O voluntarily left the most recent work without good cause. O appeals. Since, under Section 1256.1 of the code the department has not finally determined that O was initially eligible and may reconsider the determination, O is not entitled to continued payment of benefits pending decision on the appeal.

EXAMPLE 16. False Statement. Claimant P is in continued claim status and drawing benefits when the department, as a result of a benefit audit, learns that P drew benefits on a prior claim while working and that when P filed the prior claim P had, with actual knowledge, falsely stated that P was not working. The department disqualifies P for a false statement on the prior claim. P appeals. Since the department has finally determined that P was initially eligible on the current claim, P is entitled to continued payment of benefits pending decision on the appeal of the false statement disqualification.

EXAMPLE 17. False Statement. Claimant Q, a stenographer, files an additional claim indicating to the department that Q was laid off due to lack of work. When Q reports for the first payment, the department has received an employer protest indicating that Q voluntarily quit. After further investigation, the department determines that the quit was for good cause under Section 1256 of the code. However, the department determines that Q withheld material facts concerning the separation and disqualified Q under subdivision (a) of Section 1257 of the code. Q appeals the false statement disqualification. Since Q's quit was under nondisqualifying circumstances, the department has finally determined that Q was initially eligible for the first two weeks of the claim. Since the false statement disqualification does not begin until the week in which it is assessed (the third week of the claim), Q is

entitled to continued payment of benefits pending decision on the appeal of the false statement disqualification. EXAMPLE 18. Suitable Work. Claimant R was discharged for inefficiency. The department determines that R is not disqualified as the discharge was for reasons not constituting misconduct. R files a continued claim and subsequently refuses a referral to a job. The department determines that R refused an offer of suitable work without good cause and disqualifies R. R appeals. Since R's discharge was under nondisqualifying circumstances and the department has finally determined that R was initially eligible, R is entitled to continued payment of benefits pending decision on the appeal of the work refusal disqualification. EXAMPLE 19. Suitable Work. Claimant S, a roofer, is laid off from a job when it is completed. A few days later S's former employer obtains a new contract and recalls S for a permanent full-time job. S refuses the job and files a new claim for benefits the next day. The department disqualifies S for having refused an offer of suitable work. S appeals. Since the department has not finally determined that S was initially eligible because S's refusal of suitable work is the cause of S's unemployment and existed at the time S filed the claim, S does not have the right to receive benefits pending decision on the appeal. EXAMPLE 20. Trade Dispute. Claimant T, a grocer checker and member of the Retail Clerks Union, voluntarily remains away from work after the union gives a strike notice and establishes a picket line at the premises of T's employer. T files a claim and the department determines that T is ineligible for having voluntarily left work due to a trade dispute. T appeals. Since T became unemployed under disqualifying circumstances and the department has not finally determined that T was initially eligible, T is not entitled to receive benefits pending decision on the appeal. EXAMPLE 21. Trade Dispute. A group of claimants are in continued claim status and receiving benefits when a trade dispute begins at the fruit processing plant where they had worked during the past season. These claimants are on a seniority list and are members of the striking union. The workers who are still working at the plant go on strike and the employer starts recalling the other workers by seniority. This group of claimants refuses to

report for work after having been recalled, and the department determines they voluntarily left their work due to a trade dispute. Each of the claimants in the group files a timely appeal. Since the department has finally determined that each of the claimants was initially eligible as having been laid off for lack of work at the end of the season, each claimant is entitled to continued payment of benefits pending decision on the appeal from the trade dispute disqualification.

EXAMPLE 22. Trade Dispute. Claimant U, a member of the Teamsters Union, leaves work by going on strike against U's employer, a trucking company. U obtains temporary work as a bartender and is laid off after six weeks. U files a new claim listing the bar as the most recent work. The department pays U benefits for three weeks and then ascertains that U was involved in the trade dispute. The department determines U's work as a bartender was temporary, and that U remains unemployed due to the trade dispute and is ineligible. U appeals. Since the department has finally determined that U was initially eligible, U is entitled to continued payment of benefits pending decision on the appeal.

EXAMPLE 23. Trade Dispute. Same facts as Example 22 above, except that the department knows at the time Claimant V files a claim that V became unemployed due to the trade dispute. The department determines that V's intervening temporary work as a bartender was not permanent bona fide employment which would purge the trade dispute disqualification. The department determines that V remains unemployed due to the trade dispute and is ineligible. V appeals. Since the department has finally determined that V was initially ineligible for benefits, rather than initially eligible, V is not entitled to receive any benefits pending decision on the appeal.

EXAMPLE 24. Reconsideration--Department Error. The department makes an error concerning Claimant W's initial eligibility by neglecting to note that W indicated W had quit W's last job for noncompelling reasons. The department determines that W is eligible as having left the job for compelling reasons. The department discovers its error within 20 days of its determination, reconsiders the determination within the 20-day period, and determines that W voluntarily left the work without good cause and is ineligible for benefits. W appeals.

Since under Section 1332 of the code the department may reconsider its determination within 20 days and the initial determination was not final, W is not entitled to receive benefits pending decision on the appeal. EXAMPLE 25. Reconsideration--Department Error. Same facts as Example 24 above, except that the department discovers its error after 20 days from the time benefits were paid to Claimant X. The department reconsiders and issues a determination that X is ineligible. X appeals. Since the department has finally determined that X was initially eligible, X is entitled to continued payment of benefits pending decision on the appeal.

(e)

Fraud, Misrepresentation or Willful Nondisclosure. The department has not finally determined that a claimant is initially eligible for benefits and a claimant does not have the right to continue to receive benefits pending decision on an appeal if the claimant has made a willful false statement or representation, with actual knowledge of the falsity thereof, or has willfully withheld a material fact concerning his or her initial eligibility. EXAMPLE 26. Fraud. Claimant Y files a claim indicating that Y is not employed. Y is paid benefits. The department subsequently discovers that Y was fully employed at the time Y filed the claim, and that Y had actual knowledge of the falsity of the statement to the department that Y was not employed. In such a case involving fraud, misrepresentation or willful nondisclosure, the department may, pursuant to Section 1332.5 of the code, reconsider the initial determination of eligibility at any time and disqualify the claimant. The department reconsiders and disqualifies Y since Y was fully employed and, with actual knowledge of its falsity, made a false statement that Y was not employed. Y appeals. Since the department has not finally determined that Y was initially eligible and may reconsider, Y is not entitled to continued payment of benefits pending decision on the appeal.

(f)

Fraud Conviction. If a claimant is convicted under Section 2101 of the code by any court of competent jurisdiction of willfully making a false statement or knowingly failing to disclose a material fact to obtain or increase benefits, the claimant forfeits any right to benefits for 52 weeks beginning with the week in which the criminal complaint was filed (see subdivision (a) of Section 1263 of the code).

(g)

Notice to Claimant Regarding Appeal. If the department finally determines that a claimant is initially eligible for benefits and subsequently determines that the claimant is ineligible or disqualified, the department shall notify the claimant of the right to appeal to an administrative law judge. If an appeal is filed the department shall also notify the claimant that the claimant may elect to continue to receive benefits pending the appeal, and that the claimant may be required to repay such benefits if the administrative law judge affirms the department's determination of ineligibility or disqualification.

(h)

Appeal by Claimant. A claimant whom the department initially determines to be eligible but subsequently determines ineligible, and who files a timely appeal, is entitled to continue to receive benefits pending decision on the appeal. However, if the claimant's appeal is untimely because it was not filed within 20 days of service of the notice of the department's determination, the claimant is not entitled to receive benefits pending decision on the appeal. If an administrative law judge dismisses a claimant's appeal for nonappearance, benefit payments to the claimant cease immediately upon the department's receipt of that decision, since the claimant has had an opportunity for a fair hearing on the appeal.