

MEMORANDUM

To: Joseph Sieber, Chairman;
Gerald Yarbrough, Vice Chairman;

FROM: Joan B. Futterman, Acting Board Member
Board of Review

Subject: Minutes of the April 30, 2014
Board of Review Meeting

Date: May 5, 2014

THESE MINUTES HAVE NOT BEEN FORMALLY APPROVED AND ARE SUBJECT TO CHANGE OR MODIFICATION BY THE BOARD OF REVIEW AT ITS NEXT MEETING. NO DECISION OF THE BOARD OF REVIEW IS FINAL UNTIL IT HAS BEEN MAILED TO THE INTERESTED PARTIES.

1. **FORMAL OPENING:** A regular meeting of the Board of Review, Department of Labor was held on Wednesday, April 30, 2014, at 9:00 a.m. at the Board of Review offices, Labor Building, John Fitch Plaza, 7th Floor, Large Conference Room, Trenton, New Jersey. Notice of said meeting was posted in the Board of Review's office, filed with the Secretary of State, and published annually in *The Trenton Times* and *The Star Ledger*. **The next regular meeting of the Board of Review is scheduled for Wednesday, May 7, 2014, at 9:00 a.m.** at the Board of Review offices, Labor Building, John Fitch Plaza, 7th Floor, Large Conference Room, Trenton, New Jersey.

Roll Call: Present: Mr. Sieber, Chairman
Mr. Yarbrough, Vice-Chairman
Ms. Futterman, Acting Board Member

2. Following a motion by Mr. Yarbrough and seconded by Ms. Futterman, the minutes of the April 23, 2014 meeting were approved.

3. New Business

(a) 00001906

This matter, presented by Ms. Jackson, is whether the claimant was either an employee or an independent contractor. This matter had been tabled at the Board meeting of April 15, 2014. The Appeal Tribunal held that the claimant was an independent contractor. After consideration, the Board voted to remand the matter to the Appeal Tribunal for additional testimony and for the state auditor to give an opinion as to the issue. Ms. Jackson will prepare the remand.

(b) 372,431

Ms. Futterman presented this matter whether the employer's refusal to waive a non-compete agreement resulted in the claimant's loss of a new job, renders the claimant disqualified for benefits. This matter had been remanded by the Appellate Division for additional testimony. The Appeal Tribunal held the claimant voluntarily left her employment without good cause attributable to the work, in accordance with N.J.S.A. 43:21-5(a). The Board, after discussion, voted to modify the decision of the Appeal Tribunal, holding that the claimant is partially disqualified for benefits, under N.J.A.C. 12:17-9.2. Ms. Futterman will prepare the decision.

(c) 441,237

This matter, of whether the claimant was discharged for theft, was presented by Mr. Gitter. The Appeal Tribunal held the claimant was discharged for gross misconduct connected to the work and disqualified for benefits under N.J.S.A. 43:21-5(b). After consideration, the Board voted to remand the matter to the Appeal Tribunal for additional testimony regarding the missing items. Mr. Gitter will prepare the remand.

(d) 346,317

Mr. Gitter presented this matter regarding whether the claimant was discharged for misconduct connected to the work. The case was remanded by the Appellate Division for reconsideration. The Appeal Tribunal held that the claimant was discharged for severe misconduct connected to the work, under N.J.S.A. 43:21-5(b). The Board, after a discussion, voted to reverse the decision of the Appeal Tribunal and hold that the claimant was not discharged for misconduct connected to the work, under N.J.S.A. 43:21-5(b).

(e) 439,059

This matter, presented by Ms. Hart, is whether the claimant's failure to contact her employer, a temporary employment agency, after the end of her assignment, renders her disqualified for benefits. The Appeal Tribunal held that the claimant was not disqualified under N.J.S.A. 43:21-5(a). After consideration, the Board majority voted to reverse the decision of the Appeal Tribunal and hold the claimant disqualified for benefits, in accordance with N.J.S.A. 43:21-5(a) and N.J.A.C. 12:17-15.1. Not is taken that there were two prior determinations of entitlement. Ms. Hart will prepare the decision. Ms. Futterman will prepare a dissenting opinion.

There being no further business to transact, a motion was made by Mr. Yarbrough to adjourn the meeting. Ms. Futterman seconded the motion.

SUBMITTED FOR APPROVAL:

Joan B. Futterman
Acting Board Member

JBF:ldv