

**To: New Jersey Law Revision Commission**  
**From: Erik Topp**  
**Re: *Anderson v. Board of Review***  
**Provision of Unemployment Benefits, N.J.S. 43:21-5**  
**Date: November 6, 2017**

## MEMORANDUM

### Executive Summary

In *Anderson v. Board of Review, Dept. of Labor and Workforce Development*,<sup>1</sup> the Appellate Division considered whether an employee who held two jobs with a single entity may avail himself of unemployment benefits in a situation where he resigns from one of his positions and is then fired from the other.<sup>2</sup>

The court determined that an employee in such a situation may claim unemployment benefits, as the resignation from the first position has no bearing on the firing from the second position.<sup>3</sup>

### Background

Anderson was employed part-time by the Burn Foundation, a subsidiary of St. Barnabas Medical Center, as a driver and fire safety instructor, and by another St. Barnabas subsidiary, the Community Medical Center, as a fire extinguisher inspector.<sup>4</sup> Upon his resignation from the St. Barnabas position, he was effectively terminated – no more assignments were given to him – from his position at the Community Medical Center (where he worked and was paid for only two more days before the position was “reassigned due to restructuring and budget restrictions[.]”<sup>5</sup>

Anderson applied for unemployment benefits based on his termination from the Community Medical Center position, but was denied the benefits by the unemployment agency.<sup>6</sup> Complicating matters was the fact that Anderson was paid for both positions by St. Barnabas with a single check, and had only one employee number.<sup>7</sup>

On appeal, the Court reasoned that Anderson was entitled to unemployment benefits on the grounds that he was indeed “involuntarily terminated and did not resign” from his position at

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<sup>1</sup> No. A-1353-14T3, 2016 WL 4446160 (App. Div. Aug. 24, 2016).

<sup>2</sup> *Id.* at \*1.

<sup>3</sup> *Id.* at \*4.

<sup>4</sup> *Id.* at \*1.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at \*1, \*3.

the Community Medical Center.<sup>8</sup> The Court reasoned that, like the employee in *Merkel v. HIP of N.J.*<sup>9</sup>, Anderson was ““forced into the ranks of the unemployed”” by his termination from the Community Medical Center position, not by his resignation from the St. Barnabas position. In *Merkel*, the plaintiff was not deemed

“unemployed” under the statute and was not eligible for unemployment benefits as long as she held her full-time position. However, when she was involuntarily discharged by the second [full-time] employer, which employment “established her basic benefit eligibility,” we held she was not disqualified under *N.J.S.A. 43:21-5(a)*, even though she had resigned voluntarily without good cause attributable to the work from her part-time job two weeks before her full-time job involuntarily terminated her.<sup>10</sup>

The regulations governing the Board of Review “address the situation of a worker holding two jobs with two employers, one of which may be part time.”<sup>11</sup> In these situations, the worker sacrifices his eligibility for unemployment benefits if he is employed by two or more entities part time, and leaves one of those positions voluntarily without good cause.<sup>12</sup> However, because Anderson was technically only employed by St. Barnabas, the regulations were inapplicable to his situation.<sup>13</sup> In the absence of applicable regulations, the Court found the reasoning in *Merkel* persuasive, and because part-time employees are allowed to collect unemployment benefits, the Court reversed and remanded for calculation of the benefits owed to Anderson.<sup>14</sup>

The relevant portion of the statute regarding eligibility for unemployment compensation states that an individual is disqualified for benefits where:

For the week in which the individual has left work voluntarily without good cause attributable to such work, and for each week thereafter until the individual becomes reemployed and works eight weeks in employment, which may include employment for the federal government, and has earned in employment at least ten times the individual’s weekly benefit rate, as determined in each case. . . . This subsection shall not apply to an individual who voluntarily leaves work with one employer to accept from another employer employment which commences not more than seven days after the individual leaves employment with the first employer, if the employment with the second employer has weekly hours or pay not less than the hours or pay of the employment of the first employer, except that if the individual gives notice to the first employer that the individual will leave

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<sup>8</sup> *Id.* at \*3.

<sup>9</sup> 240 N.J. Super. 436 (App. Div. 1990).

<sup>10</sup> *Ibid.*

<sup>11</sup> *Anderson*, 2016 WL 4446160 at \*3.

<sup>12</sup> *Id.* (citing N.J.A.C. 12:17-9.2).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at \*3-\*4.

employment on a specified date and the first employer terminates the individual before that date, the seven-day period will commence from the specified date.<sup>15</sup>

### **Conclusion**

While the regulations provide some guidance regarding the eligibility for benefits of workers terminated from part-time positions, they are seemingly limited considering no part addresses the situation at issue in *Anderson*.

Staff seeks authorization to conduct additional research and outreach to determine whether modifying N.J.S. 43:21-5 to clarify the situations in which part-time workers are eligible for unemployment benefits would aid in interpreting the law and potentially eliminate the need for further litigation regarding the issue raised in *Anderson v. Board of Review*.

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<sup>15</sup> N.J.S. 43:21-5(a).