

ARIZONA'S UNEMPLOYMENT INSURANCE SYSTEM:
AN OVERVIEW FROM THE CLAIMANT'S PERSPECTIVE

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PREFACE

This report is one of a series of special reports prepared for the Unemployment Insurance Task Force. The Task Force was created July 12, 1976 through Interdivisional Directive No. 76-5 by Dr. Arlyn Larson, Deputy Director of the Arizona Department of Economic Security. Because of the tremendous program and financial pressures that the DES Unemployment Insurance System had experienced during the prior two-year period, an in-depth review and analysis of many aspects of the UI program was to be conducted by the Task Force. Following discussions with employer and employee groups, members of the Arizona Legislature, the public at large and the regional staff of the Employment and Training Administration, it was determined that emphasis was to be placed on the formulation of recommendations for changes in both employment security law and policy, and on the development of a number of research studies designed to provide factual background or appropriate analysis of current policy problems.

The Unemployment Insurance Task Force is composed of the following members: Mr. Joseph Anderson (Task Force Project Officer and Cost Model Coordinator); Mr. Henry Haas (Chief, Unemployment Insurance Bureau); Mr. Harvey Finger (Chief, Appeals Bureau); Mr. Charles Vance (Contributions Section Manager); Mr. Tom Vaughn (Benefits Section Manager) and the Section Manager of the Research and Reports Unit. Dr. Robert D. St. Louis, Dr. Paul L. Burgess, and Dr. Jerry L. Kingston directed the staff research for the Task Force. The input from the Task Force on the draft of this report is appreciated. Especially valuable were the comments of Tom Vaughn.

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INTRODUCTION

Arizona's unemployment insurance (UI) system is based upon a complex set of statutes and Benefit Policy Rules (BPR). The latter spell out agency interpretations and policy guidelines to be used in implementing the laws which provide the broad outlines within which the agency must operate. In addition to this complex set of law and agency policy, the UI system also represents probably the most complex social program in terms of interactions among the agency, workers and employers. These interactions are sketched out in Chart 1 to provide background for this report, which focuses on the claimant's interaction with the system. Although this report is restricted to claimant interaction with the UI system, the presentation nonetheless represents a very sketchy portrayal, and in some cases nothing more than a minimal indication of the steps involved. This lack is especially apparent in the case of the appeals process, which is only mentioned but not dealt with in any detail. The condensed presentation is deliberate, however, because it is necessary to abstract out selected key elements of the overall process to provide an overview that is useful rather than overwhelming to the reader not intimately familiar with the details of the UI system.

The essential steps involved in filing for and receiving UI benefits are depicted in Chart 2. The remainder of the report contains brief descriptions for each step that is shown in this chart.

CLAIMANT'S ENTRY INTO ARIZONA'S UNEMPLOYMENT INSURANCE SYSTEM

A brief description of each of the steps portrayed in Chart 2 is provided below. For ease of reference, each section of the text also is keyed to the specific numbered step referenced in Chart 2.

Unemployed Worker (Step 1, Chart 2)

Once a worker employed by a covered employer becomes unemployed, Section 23-772, ARS, and Regulation R6-3-1801 require that employers disseminate unemployment insurance information to their employees. Regulation R6-3-1801 states, "At the time a worker is to be laid off or separated from employment...the

CHART 1
ARIZONA UNEMPLOYMENT INSURANCE SYSTEM:
INTERRELATIONS AMONG

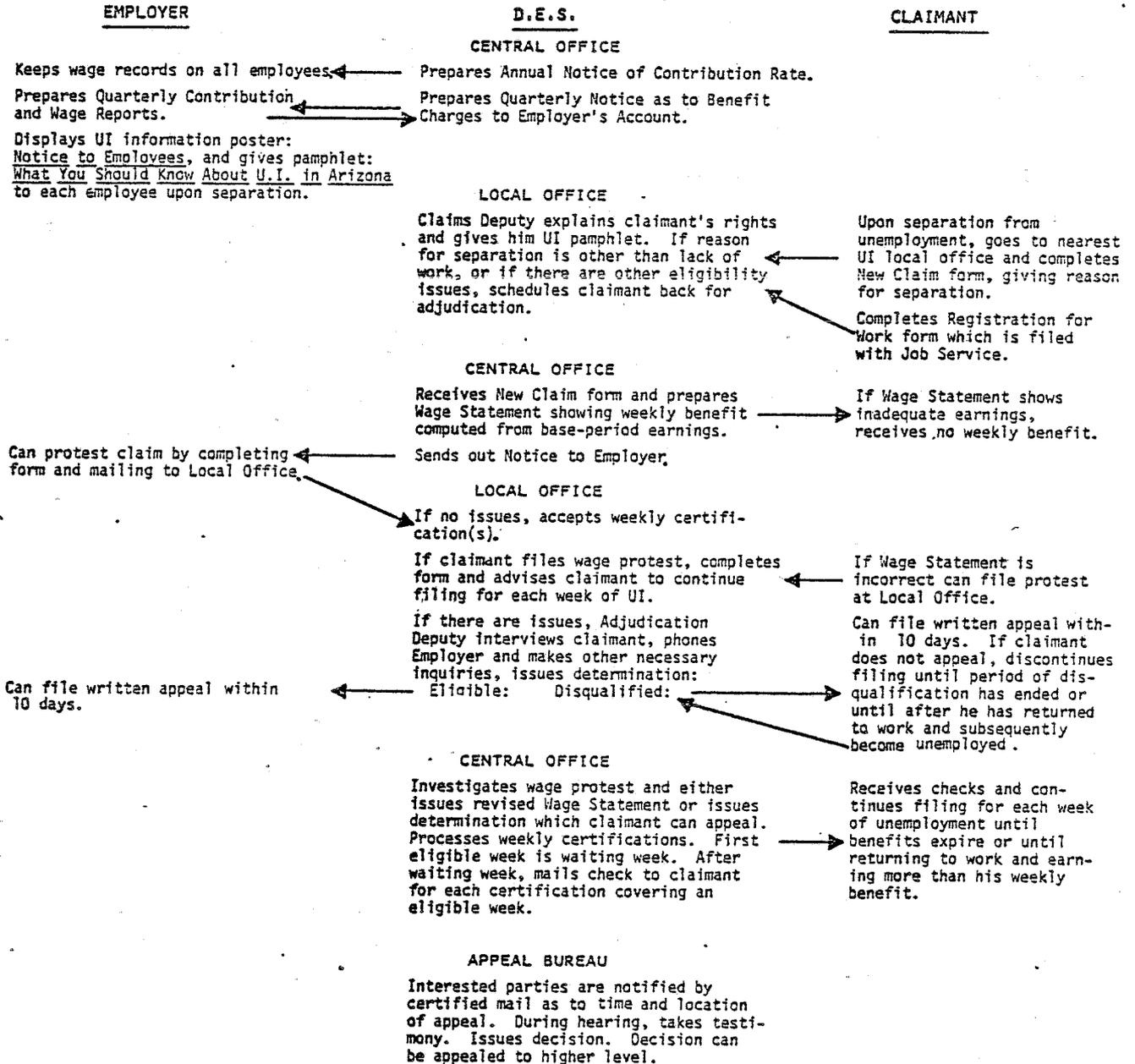
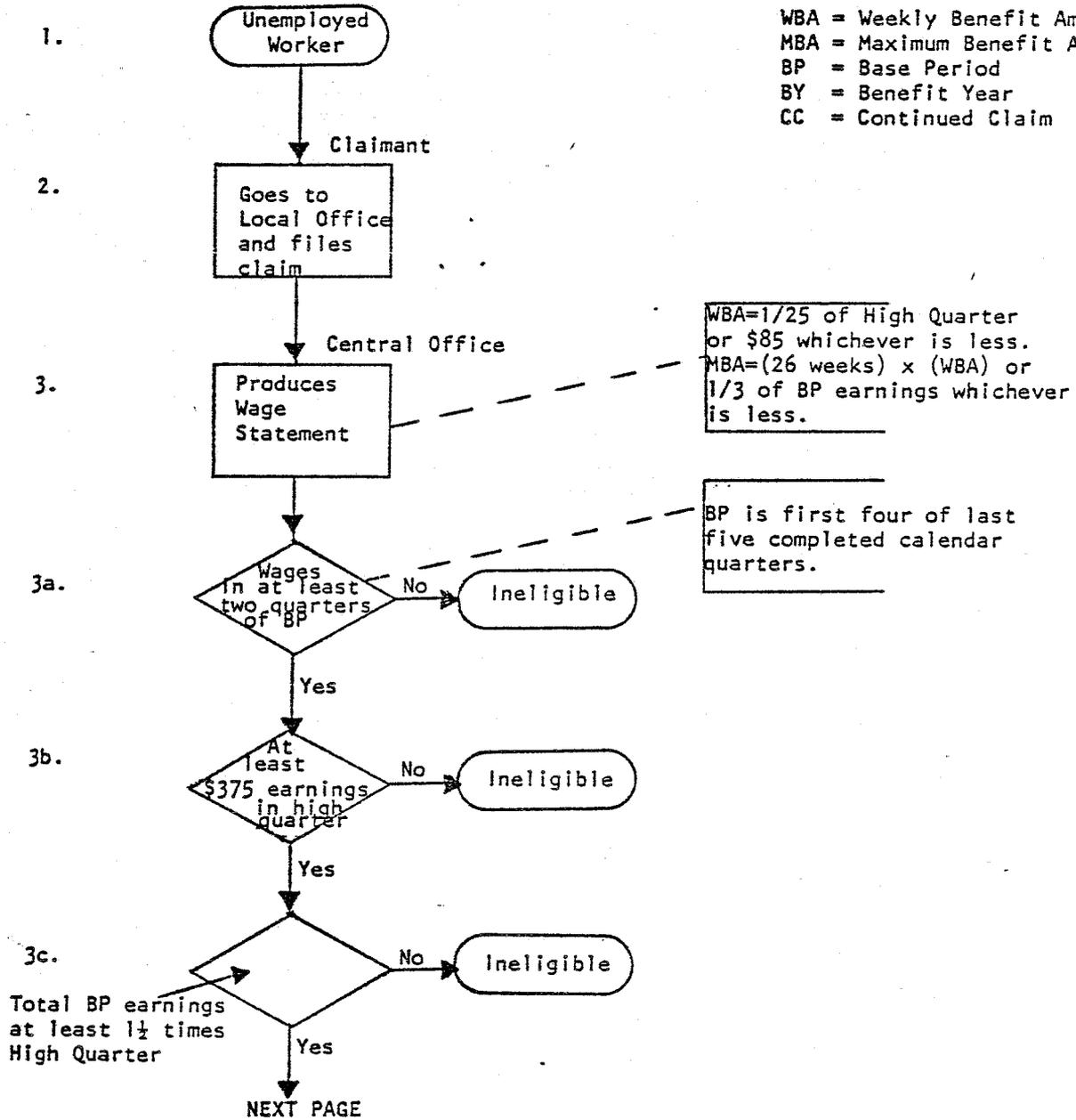


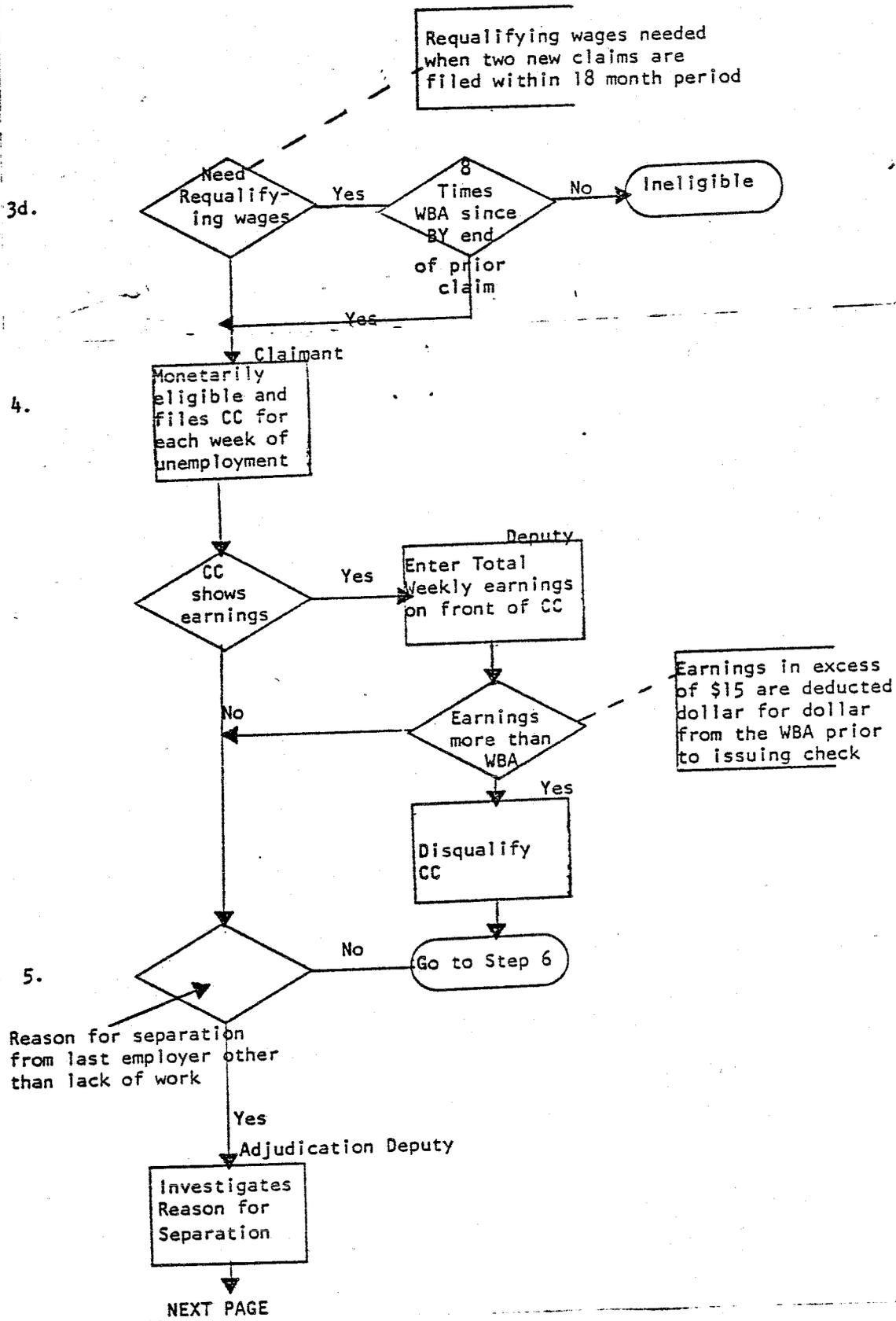
CHART 2

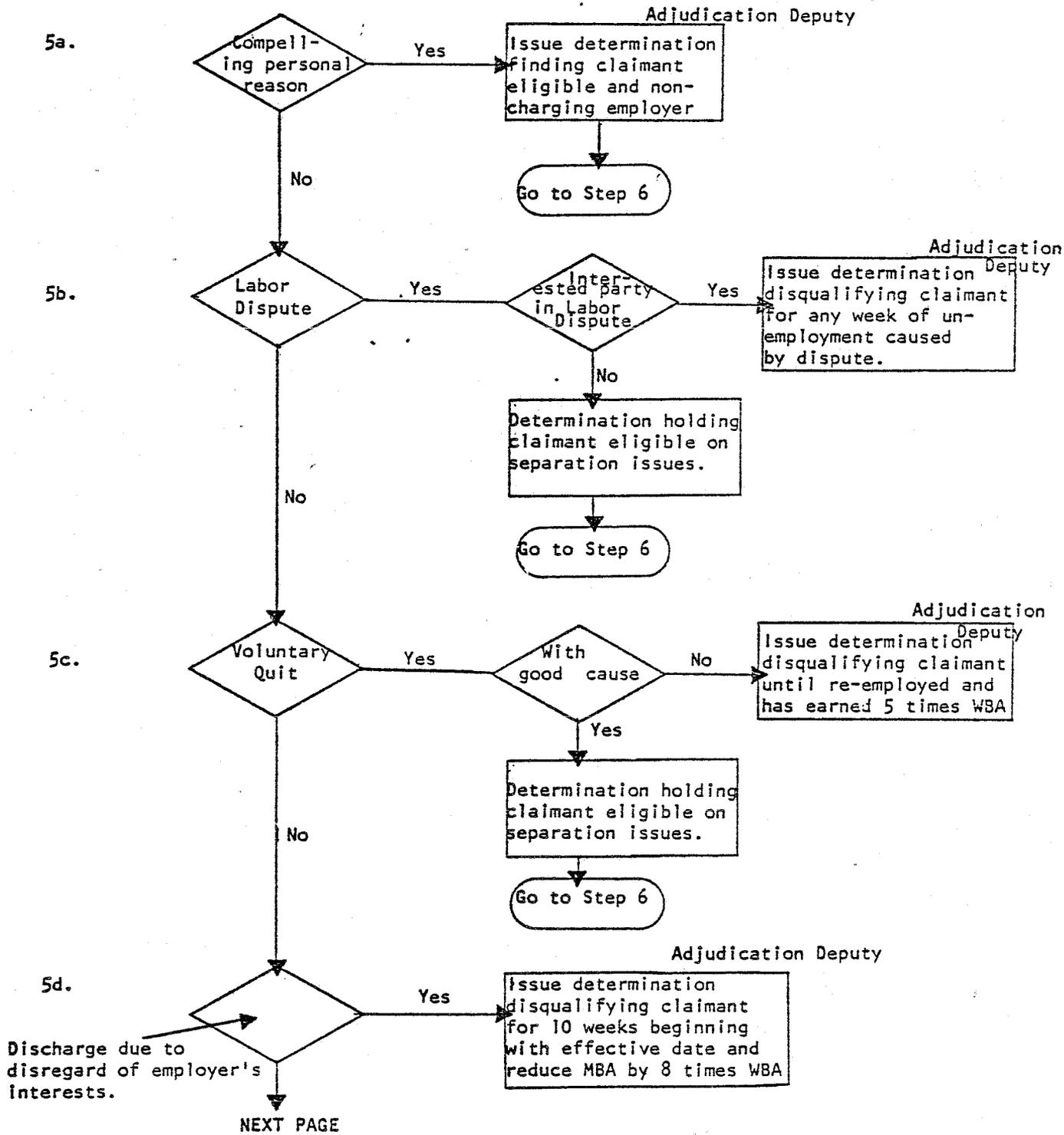
Claimant's Entry Into Unemployment Insurance System

Abbreviations used in chart:

- WBA = Weekly Benefit Amount
- MBA = Maximum Benefit Award
- BP = Base Period
- BY = Benefit Year
- CC = Continued Claim







Employers are charged for Voluntary Quits with good cause and discharge without disregard of employer's interests

Adjudication Deputy

Determination holding claimant eligible on separation issues

6.

Other eligibility issues

No

Go to Step 7

Yes

6a.

claimant receives vacation/sick pay

Yes

Week claimed includes vacation pay exceeding WBA

Yes

Issue determination disqualifying weeks covered by vacation pay

Adjudication Deputy

No

6b.

Available for Work

No

Claimant in Approved training

Issue determination holding claimant ineligible for period of unavailability.

Adjudication Deputy

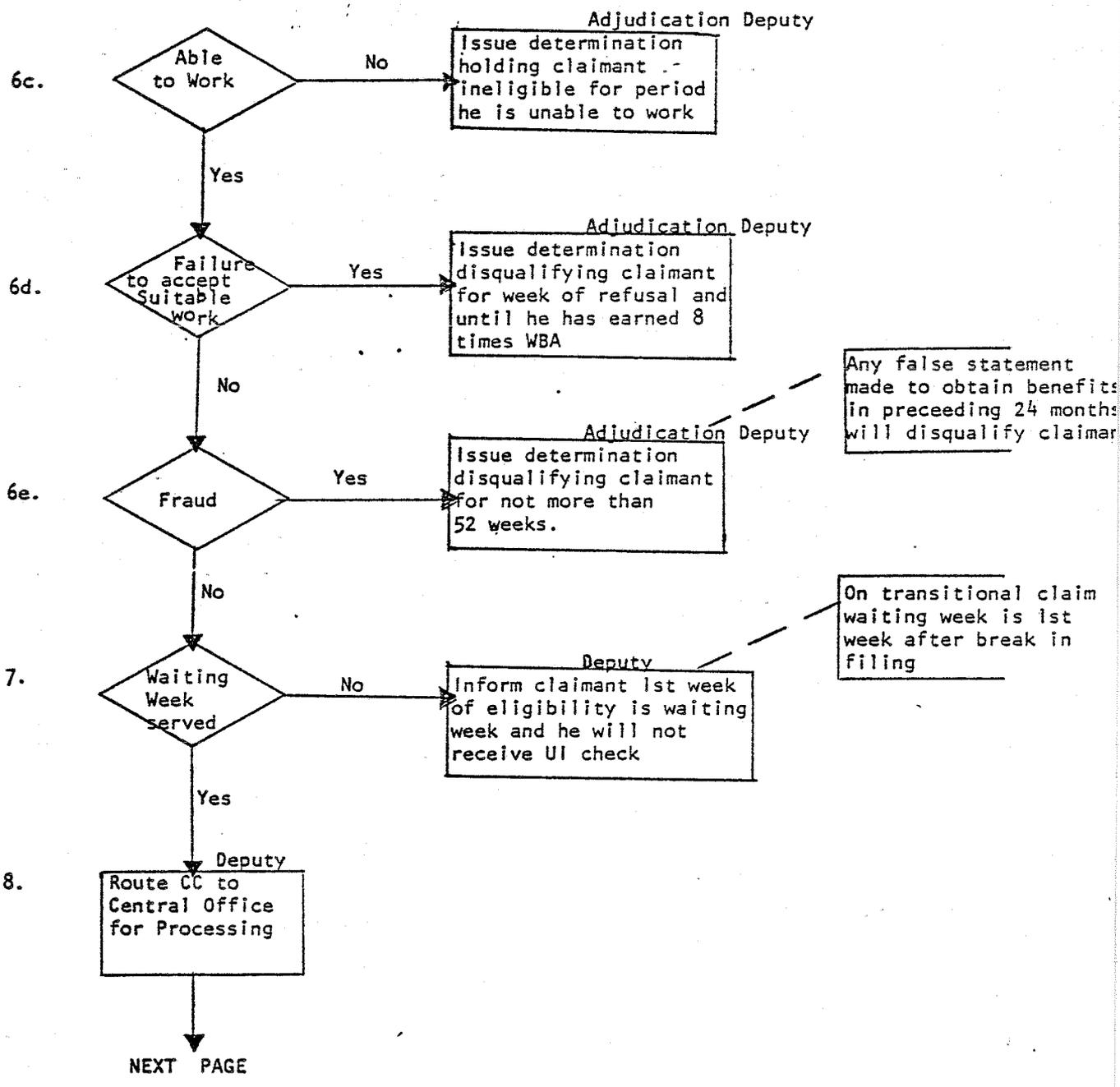
Yes

Issue determination holding claimant eligible while in approved training

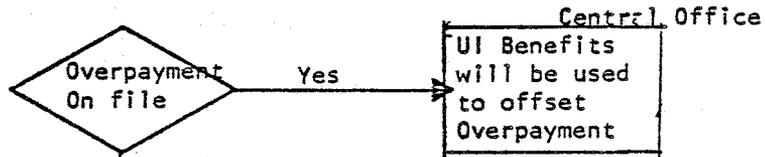
Adjudication Deputy

Claimant files subsequent CCs through approved training office.

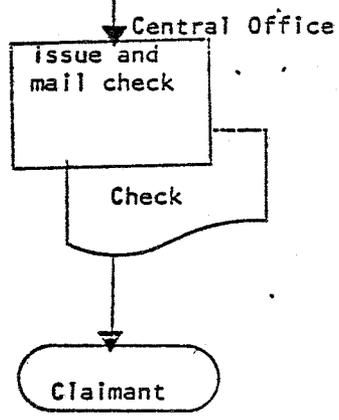
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9.



10.



employer shall furnish such worker an information pamphlet about unemployment insurance benefits in Arizona supplied by the Department."

Worker Files Claim in Local Office (Step 2, Chart 2)

An unemployed worker reports to a "local office" to file a claim. There are 27 offices throughout the state, and an unemployed worker may file at any office (normally claims are filed at the office closest to place of residence). The individual may file a claim by mail or at an itinerant point if regular claims service is not available. An individual who files a claim for unemployment benefits is referred to as a "claimant."

Regulation R6-3-1802 specifies that a claimant must register for work and file a "claim for benefits" on a prescribed Department form to be considered for benefits. The regulation also specifies that the claimant must furnish the following information to determine eligibility: name and address of last employer, last day of work, reason for separation from employment, that he is unemployed, registers for work, is residing in the United States, and that he is aware the law provides penalties for any false statements made in connection with the claim.

The claimant may file a claim against Arizona or against another state if wage credits were earned in another state. Section 23-644, ARS, authorizes the Department to enter into reciprocal agreements with other states and the federal government. The claimant also may file a "combined wage claim," which is based on employment in two or more states. Arizona becomes the paying state when a combined wage claim is filed in the state; wage credits are transferred to Arizona from the other states in which such a claimant had relevant covered employment.

A department representative known as a "claims deputy" reviews the claim for completeness and accuracy, and supplies any requested information. The deputy informs the claimant where, when, and how to make his next report. The claimant is given an identification card which contains the date of filing for the initial claim, as well as further reporting instructions. At the initial interview, the claimant receives "continued claim" forms with an explanation for completion and return. Each continued claim is a certification for a week of unemployment. It is necessary to file a continued claim for each week that

benefits are claimed. A continued claim is not filed until the week for which the claim is filed has ended. After all required explanations have been given the claimant, the "new claim" process is complete. The first claim filed by the claimant in a benefit year is called a "new claim." Claims for benefits following intervening employment within the benefit year established by the first claim are called "additional claims." During the initial interview, the claimant also is given an informational pamphlet, (PA-007) "What You Should Know About Unemployment Insurance in Arizona," and instructed to read it; also, there is a continuous visual presentation of key points in the pamphlet and the claimant is asked to view this. The pamphlet explains the claimant's rights and responsibilities while filing for unemployment insurance.

At any time during the claims process, "issues" may arise as to the claimant's eligibility for benefits. An "issue" is a potentially disqualifying fact if, when resolved, it could result in the denial of benefits for the claimant. If such an issue arises, the claimant is informed of any pending interview and is given a form explaining the nature of the interview, the date and time to report, and the claimant's rights. The determination of issues is described in more detail below.

Wage Statement and Monetary Eligibility Determination (Step 3, Chart 2)

New claims are forwarded to the "Processing Unit," which is located at a state administrative office known as Central Office. The initial priority is to produce a "wage statement" for the claimant. The original wage statement is mailed to the claimant, and a copy is sent to the local office where the claim was filed to become part of the claimant's "claim record card." Regulation R6-3-1803 states: "The Department shall prepare a statement as to the claimant's weekly benefit amount, total benefits, base-period wages, and other data pertinent to the claimant's benefit rights." The wage statement supplies this information; and the following definitions may serve to clarify the terms used:

Benefits: Unemployment Insurance, Unemployment Compensation for Federal Employees, or Unemployment Compensation for Ex-Servicemen, including Extended Benefits, Federal Supplemental Benefits, and Special Unemployment Assistance payable to an individual with respect to his unemployment.

Base Period Wages: Wages earned in covered employment during the first four of the last five completed calendar quarters immediately preceding the effective date of the new claim. (Section 23-605, ARS)

Benefit Year: The one-year period beginning with the first day of the first week of unemployment with respect to which an individual first files a new or transitional claim, provided that at the time of filing such claim he has earned qualifying wages. (Section 23-609, ARS)

Weekly Benefit Amount: The amount of benefits payable to the claimant for a week of full unemployment (WBA). The amount--calculated as 1/25 of high quarter earnings up to a maximum of \$85--ranges from \$15 to \$85 in increments of \$1. (Section 23-780, ARS)

Total Benefits: Usually referred to as the Maximum Benefit Award (MBA), or the maximum amount of benefits potentially payable to a claimant during a benefit year. The MBA is defined as the lesser of 26 times WBA or 1/3 base period earnings. (Section 23-780, ARS)

Monetary Determination: The wage statement is a monetary determination in that it is used to notify the claimant of whether he has earnings that make him monetarily eligible for benefits and, if so, the amount of the MBA and WBA.

To be monetarily eligible, the claimant must have worked during the base period and covered wages must have been paid in at least two of the four calendar quarters. (Section 23-771, ARS). In addition to covered wages in two or more quarters of the base period, the claimant must have received at least \$375 in one base-period quarter. (Section 23-771, ARS). The total wages paid during the base period must equal one and one-half times the high quarter earnings for the claimant to be monetarily eligible for benefits. For example, if the claimant's high quarter earnings were \$1200, total base period wages of at least \$1800 would be required for monetary eligibility. The additional \$600 could have been earned in one or more of the remaining three calendar quarters. (Section 23-771, ARS).

"Requalifying wages" are required when two new claims are filed within an 18 month period. Paragraph 7, Section 23-771, ARS stipulates, "following the beginning date of a benefit year and prior to a subsequent benefit year...he had been paid wages equal to or in excess of eight times the weekly benefit amount."

Monetarily Eligible Claimant Files Continued Claim (Step 4, Chart 2)

The claimant files a continued claim for each week that benefits are claimed. Earnings during the week claimed must be reported on the continued claim. If the earnings equal or exceed the claimant's weekly benefit amount (WBA), the claim would be disqualified for that week and no benefits would be paid. If the individual earned less than his WBA, he would be paid his WBA less earnings in excess of \$15. Paragraph B, Section 23-779, ARS, states "each eligible individual...shall be paid...an amount equal to the person's weekly benefit amount less that part of the wages...payable...which is in excess of fifteen dollars." For example, a claimant with a WBA of \$53 who reports earnings of \$46 would be entitled to benefits of \$22. Earnings have the effect of increasing the number of weeks a claimant may receive benefits.

Reason For Separation Other Than Lack of Work (Step 5, Chart 2)

When a continued claim is filed, the claimant is interviewed regarding any existing issues. Section 604 of Claims Procedures-Local Offices states, "A non-monetary determination is made by a Deputy to resolve a question of whether a claimant...meets all other eligibility requirements...or whether the claimant is subject to disqualification." This process is an "adjudication," and the deputy who makes the determination is an "adjustment deputy." The adjustment deputy acts in a quasi-judicial capacity, and derives his authority from Section 23-773, ARS, which states in part: "A representative designated by the department as a deputy shall promptly examine any claim for benefits, and on the basis of the facts found by him, shall determine whether the claim is valid.... The deputy shall promptly notify the claimant and any other interested parties of the determination and the reasons therefor."

One class of determinations is based on the reason for separation from the last employer. When the reason for separation is other than lack of work, a deputy must determine whether a disqualification is warranted. Separations classified as voluntary quit, discharge, labor dispute, retirement, or leaving for a compelling personal reason not attributable to the employer require adjudication. In addition to determining whether disqualification is warranted, the employer's "chargeability," or tax liability must be considered. Although the primary purpose of the benefit process is "to pay benefits when due," a

deputy also must determine employer liability. Sections 23-727, 23-773, and 23-777, ARS together with Regulation R6-3-1708 specify the relationship between benefit determination and employer liability. The concept of "fault versus no fault" is an important consideration when adjudicating separation issues. The law provides payment of unemployment benefits to persons "unemployed through no fault of their own." If the claimant's unemployment is due to some "fault" on the part of the employer, the deputy would hold the claimant eligible and "charge" the employer, which may result in an increase in the employer's tax. The types of separation issues which arise are reviewed briefly below.

Compelling Personal Reasons (Step 5a, Chart 2). Some separations occur through no fault of the claimant and no fault of the employer. Personal considerations may leave the claimant with no reasonable choice except to quit, and the separation may not be attributable to the employer. Section 23-727 D, ARS, refers to such a leaving as, "compelling personal reasons not attributable to the employer." The Benefit Policy Rules define compelling as, "to drive or urge with force; to over-power." Personal reasons are defined as, "those causes which arise from the personal circumstances of the claimant, as distinguished from causes arising from a condition created by or relating solely to the employment." Persons attributable to the employer include those, "relating not only to conditions of employment but also to an employer's conduct."

Deputies could be tempted to resolve separation issues under the compelling personal reason provision because the claimant is not disqualified, and the employer is relieved of charges to his experience rating account. However, before a separation can be determined to be a leaving for a compelling personal reason, it must be shown that: the separation was caused by personal circumstances of the claimant (such as illness, child care, etc.) rather than work related circumstances; the claimant exercised all reasonable alternatives prior to leaving (e.g., made a request for transfer or leave of absence); and the actions of the employer did not contribute to the necessity of leaving. An example of leaving for a compelling personal reason could be that of a claimant who states he left due to illness. He was advised by a physician to take time off from work, and presented a supporting statement from his doctor. The illness was not attributable to the employment. The claimant requested a leave of absence, which the employer was unable to grant. The employer verifies the claimant's statements. The evidence

clearly indicates that the claimant had no reasonable alternative to leaving. However, had the claimant not requested a leave of absence when one was available, a leaving for a compelling personal reason could not be found as the claimant had an alternative to leaving. A leaving for a compelling personal reason is considered involuntary, and not in conflict with the philosophy of paying benefits only to those who are unemployed through no fault of their own.

Labor Disputes (Step 5b, Chart 2). Separations from employment also may occur due to labor disputes. The Benefit Policy Rules define a labor dispute as, "any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment regardless of whether the disputants stand in the proximate relationship of employer and employee." Labor dispute determinations are made at the Central Office by a designated "labor dispute deputy." This deputy investigates the circumstances surrounding the dispute and may issue one determination affecting different groups of employees.

Section 23-777, ARS, provides the basis for disqualifying an individual whose separation is the result of a labor dispute. Paragraph A, Section 23-777, ARS, stipulates that an individual with a direct interest in a labor dispute will be disqualified for any week of unemployment caused by a labor dispute, whether the dispute is a strike or a lockout. However, the same section also states that, "This provision shall not apply if it is shown...that the individual is not participating in, financing or directly interested in the labor dispute, strike or lockout or that he does not belong to a grade or class of workers of which... any of whom are participating in or financing or directly interested in the dispute, strike or lockout." Thus, the central issue is whether the employee has a "direct interest" in a dispute. Employees not considered "interested" in a dispute would be entitled to benefits. In addition, Paragraph C, Section 23-777, ARS, provides that the employer would not be charged for benefits paid to workers unemployed because of labor disputes. In labor disputes caused by the failure or refusal of an employer to conform to the provisions of an agreement or contract between employer and employee, or a state or federal law pertaining to hours, wages or other conditions of work, the employees are not disqualified from receiving benefits and the employer's account is not charged.

Voluntary Quits (Step 5c, Chart 2). When a claimant voluntarily leaves employment, a deputy must determine if disqualification from benefits is warranted. The Benefit Policy Rules (BPR) define a voluntary leaving as, "The termination of a worker-employer relationship by means of the worker's own intention as distinguished from the termination of employment brought about by either: 1) the initiative of the employer; or 2) considerations outside the control of the worker."

The "voluntary" nature of the separation is important. VL 495 of the BPR points out that a voluntary leaving exists when the claimant is not compelled to terminate employment "by reasonable necessity or compelling legal or moral family obligations." For a voluntary leaving to exist, it is necessary that the claimant had control over the situation and had the choice of remaining in employment or quitting. A voluntary quit always is considered in relation to work, and differs significantly from a leaving for a compelling personal reason (CPR) which involves considerations outside the scope of employment.

Section 23-775, ARS, states that a claimant who voluntarily quits without good cause in connection with his employment shall be disqualified from benefits for the duration of his unemployment and until he becomes reemployed and earns wages equal to five times his weekly benefit amount. The deputy must determine whether the claimant had "good cause in connection with the employment." Relating this to the fault versus no fault concept, the deputy must determine whether the "claimant is unemployed through no fault of his own." If the claimant leaves with "good cause in connection with the employment," it must be determined that the fault was not with the claimant, but with the employer. Relating to good cause, VL 210 of the BPR states: "The most commonly accepted test of good cause has been the reasonableness of the claimant's leaving his employment as measured by what the normal worker might have done under similar circumstances.... When a worker's voluntary separation from employment is consistent with well defined public policy, generally he will not be disqualified for leaving work." Problems occur when the deputy attempts to relate "good personal cause" with "good cause in connection with the employment." An individual who quits to go to school may have good personal cause for leaving, but such a quit would be voluntary and not work connected. The claimant would have a choice of remaining or leaving in this example and the reason for leaving is not job related; therefore, such a quit

would be without good cause in connection with the employment. In contrast, if the claimant had quit due to intolerable working conditions which the employer had refused to rectify, he would have left with good cause in connection with the employment.

A deputy makes a determination only after considering all of the available evidence. VL 190 of the BPR discusses burden of proof and weight and sufficiency of evidence. The claimant bears the burden of proof to establish good cause for a voluntary leaving. The weight of evidence clearly must support the claimant's position if good cause is found. VL 190.1 of the BPR states: "When voluntary leaving of work has been established or admitted, the burden of proof rests solely upon the claimant to present or relate the circumstances upon which he relies for justification of his leaving. The burden of proof consists of the requirement to submit evidence of such nature, taking all other circumstances into account, that the facts alleged appear true. When this burden has been met, the evidence becomes proof." VL 190.15 further states that, "...sufficiency is not reached until the evidence is adequate to substantiate the contention of either claimant or employer to a degree where further rebuttal or circumstantial evidence will not alter the conclusions of the investigator.... When sufficient evidence has been obtained, all the facts available must be weighed. Only relevant evidence can be considered. In determining the weight to be given, unsupported self-serving statements are outweighed by documentary statements by disinterested third parties.... Specific detailed facts must be given more credence than general statements. The testimony of eye witnesses or participants must be given more weight than hearsay statements." The best evidence is that upon which both the claimant and employer agree.

When a determination is issued disqualifying the claimant for leaving without good cause, the deputy also determines that the employer is without "fault." Paragraphs A and C, Section 23-727, ARS, and Paragraph D, Regulation R6-3-1708, provide for relief to the employer of tax liability, or "chargeability." Conversely, a determination holding that the claimant quit with good cause would result in a charge to the employer.

Discharge Due to Disregard of Employer's Interest (Step 5d, Chart 2). The employer may terminate employment by discharging a claimant for a reason other than lack of work. A determination whether the discharge was for "misconduct" connected with the work must then be made. Misconduct (MC) 5 of the BPR defines misconduct as, "...an act or omission by the worker which constitutes a material breach of duties and obligations arising out of the contract of employment, or an act or course or conduct in violation of the employee's duties, which is tantamount to a disregard of the employer's interests." The term "misconduct" is used in the industrial sense. Actions outside the scope of the worker's employment are not considered unless they bear such a relationship to the job as to render the worker unsuitable.

Section 23-775, ARS, provides that if a claimant is found to have been discharged for, "willful or negligent misconduct connected with his work," he shall be disqualified for ten weeks subsequent to filing a claim, with a deduction of eight times the weekly benefit amount from his total award. The deputy must determine whether a disregard of the employer's "interests" can be established. If employer disregard cannot be established, then the deputy would conclude that the claimant's separation was for reasons other than misconduct. If misconduct is established, the claimant would be disqualified and the employer would be relieved of charges.

In a voluntary leaving, a key element considered is "cause." In a discharge, a key element considered is "employer disregard." In some cases employer disregard is obvious, such as the worker who is repeatedly absent from work without notice when notice of absence is required by the employer. In other instances it is more difficult to establish employer disregard, such as the case of an auto mechanic who does not correctly repair a customer's car, resulting in additional expense to the employer. In both cases, the actions of the worker have caused injury to the employer. In the first case the fault is with the worker. In the second case, the worker may or may not be at fault; the employer may have hired an unqualified worker, or perhaps was not explicit in instructing the claimant as to the repairs necessary. The claimant may have exaggerated his qualifications at the time of hire and, although he was performing the work to the best of his ability, he was not qualified to do the work. There are many factors to consider before determining that the employee's actions were "willful" or "deliberate," even though the employer's interests were injured.

Misconduct sections 190.05, 190.1 and 190.15 of the BPR cover rules of evidence and how they relate to a discharge. In a quit situation the burden of proof is borne by the claimant. Conversely, in the case of a discharge the employer must bear the burden of proof. MC 190.1 states, "The burden of proof that misconduct was present, and that the discharge was for misconduct, rests upon the employer. An employer who charges misconduct but refuses or fails to produce evidence to rebut a denial by the claimant does not discharge his burden of proof. This burden may be discharged by an admission by the claimant, or by the claimant's failure or refusal to deny the employer's allegation of misconduct."

MC 190.15 states, "Since the employer has the burden of proof in misconduct cases, the weight of evidence must indicate that the offense was committed and that the discharge was primarily because of the offense. ...the weight of evidence must point to the general truth of the employer's charge. Thus, when the evidence, in its entirety, is evenly balanced, or weighs in favor of the claimant, a discharge for misconduct is not sustained. Conversely, when there is conflicting evidence, but the deputy, after due consideration, concludes that the weight of evidence favors the employer's allegations, he should hold that the claimant was discharged for misconduct."

Since the employer chooses to terminate the employee in a discharge, the responsibility to establish misconduct lies with the employer. In the example of the auto mechanic used above, it could be difficult to establish misconduct. There is no disputing the fact that the employer was injured. However, if the mechanic denied any wrongdoing, and insisted that he performed the work to the best of his ability, the employer would have to furnish conclusive proof before misconduct could be established. Another example might be that of the gas station attendant who is discharged due to cash shortages. The employee may very well be guilty of theft, but denies wrongdoing. The employer has never observed the claimant stealing, and only can state that the shortages stopped after the claimant was discharged. Since the employer cannot sustain his burden of proof, the deputy would have to conclude that misconduct was not established, and that the claimant's actions did not warrant disqualification. The principle of "innocent until proven guilty" is applicable. When the claimant is found to have been discharged for reasons other than misconduct connected with his work, the employer is charged. Conversely, a determination holding that the claimant was discharged for misconduct connected with his work would relieve the employer of charges.

Eligibility Issues Other than Separation (Step 6, Chart 2)

If a claimant is held eligible for benefits on separation issues, a number of other eligibility issues still may arise. Each of these issues--vacation/sick/holiday pay, availability for work, ability to work, failure to accept suitable work and fraud--is reviewed briefly below.

Vacation/Holiday/Sick Pay (Step 6a, Chart 2). Section 23-621, ARS, states: "An individual shall be deemed "unemployed" with respect to any week during which he performs no services and with respect to any week of less than full-time work if the wages payable to him with respect to such week are less than his weekly benefit amount." This provision of the law provides the weak statutory basis for an arbitrary policy regarding vacation, holiday, and/or sick pay. Total and Partial Unemployment (TPU) 460.75 of the BPR provides the policy for making determinations regarding this issue. Vacation, holiday or sick pay are considered wages, the receipt of which could cause the claimant to be held ineligible for the period covered by such pay.

It is important to determine whether the pay has been allocated to a specific period by the employer. For example, a firm might have a two week shutdown every July, with payment for vacation periods allocated to those two weeks; a claimant who has been employed by such a firm and who files a claim prior to July (and is entitled to vacation pay) would not be ineligible for benefits due to vacation pay, except during the two week period to which the vacation pay is allocated. Most employers do not, however, allocate vacation pay to a specific period. When a claimant has vacation, holiday or sick pay due, it usually is paid at the time of termination or shortly thereafter. TPU 460.75 of the BPR states: "If no written or verbal contract allocating vacation pay was in effect, allocate to the appropriate period following the last day of performance of services, and continuing for the number of workdays which the vacation pay would cover when allocated to workdays at the regular wage rate." Military accrued leave and federal civilian terminal leave also are allocable. Military accrued leave is allocated on a daily basis following the date of separation since military wages are based on a 30 day month.

The agency policy regarding receipt of severance pay, dismissal pay, or in lieu of notice pay is different from that regarding vacation, holiday or sick pay, even though the statutory basis (Section 23-621, ARS) is identical. On dis-

missal pay, TPU 460.35 of the BPR states: "...payments are considered to be payment for past services, and are not to be allocated to any period after the separation. This policy shall apply whether or not the contract of employment required dismissal payments." Some have questioned the consistency of a policy which provides for holding claimants ineligible due to receipt of vacation, holiday or sick pay, yet holds claimants eligible while in receipt of severance, dismissal or in lieu of notice pay. Since these issues concern only the claimant's eligibility, employer chargeability is not a factor. The employer is contacted to verify the pay information, and may be an interested party to any determination.

Availability for Work (Step 6b, Chart 2). A major eligibility issue is the claimant's availability for work. This eligibility requirement, imposed by Section 23-771, ARS, is defined in Able and Available (A&A) 5 of the BPR as, "the readiness of the claimant to accept suitable work when offered." Availability for work includes: being accessible to a labor market; being ready to work on a full-time basis; being free to seek and accept full-time work without being hampered by personal circumstance; and following a course of action reasonably designed to result in prompt reemployment. Most availability determinations fall within two categories, work search or personal restrictions. It is difficult to make an objective determination of whether a claimant has made an active search for work that meets policy requirements. Claimants are required to make an active search for work, but the number of applications required is not specified as it is felt that this can vary depending on occupation. For example, a busboy making three contacts per week could be considered not available, but a highly skilled engineer who sent out three resumes in a week could be considered available.

A&A 5 further states, "Availability for work is a relative term. The objective of availability is to determine if persons filing claims are genuinely and regularly attached to the labor market. Availability for work also is the relationship between the restrictions imposed upon a claimant and the job requirements of the work which he is qualified to perform. It implies that restrictions do not unduly lessen the possibilities of his accepting suitable work." Agency policy requires claimants to be available for full-time work, although this is not required by the law. Thus, a claimant with a history of regular but part-time work may not qualify for benefits because of unavailability for full-time work.

Although some availability issues are obvious, others require professional judgement based on knowledge of local conditions on the part of the deputy. Perhaps it is most useful to think of a continuum of eligibility-ineligibility. If the facts tend toward eligibility, then the deputy would hold the claimant eligible. Conversely, if the facts tend toward ineligibility the deputy would hold the claimant ineligible. If the facts do not tend toward either position, the deputy would have a difficult determination to make. For instance, a claimant who is attending college on a full-time basis and does not intend to seek or accept full-time work would be unavailable for work and ineligible for benefits. A claimant who has demonstrated a pattern of full-time work and full-time school attendance and declares himself willing to seek and accept work, but has a marginal work search, may or may not be eligible. It previously has been stated that sufficiency of evidence is not reached until the evidence is adequate to substantiate the contention of either the claimant or the employer to a degree where further rebuttal or circumstantial evidence will not alter the conclusions of the investigator. A&A 190.05 of the BPR states that, "Availability for work is largely subjective and intangible." A&A 190.1 further states that "A claimant's certification that he is available for work is accepted as prima facie evidence of availability in the absence of facts to indicate unavailability." Nonetheless, the deputy must ensure the highest level of objectivity possible when making an availability determination.

An availability determination of ineligibility can be for a definite or indefinite period, depending on the circumstances. Definite periods of ineligibility are assessed against claimants unavailable for a specific period, such as a two-week vacation. Indefinite periods of ineligibility would be applied when it could not be determined when or if the claimant would again be available; an example would be a claimant who could not seek or accept work due to child care problems. The period of ineligibility imposed is left to the discretion of the deputy.

A provision was added to the law regarding individuals in "approved training." Section 23-771.01, ARS, states in part, "...no otherwise eligible individual shall be denied benefits for any week which begins on or after January 2, 1972, because he is in training with the approval of the commission, nor because of the application to any such week of training of any provision...relating to availability for work, active search for work, or refusal to apply for or accept work...."

The purpose of this provision is to allow benefits to be paid to individuals who are in training to improve their employability but, because of their training, cannot meet the availability requirements of Section 23-771. To be considered "approved training": the training must be vocational in nature; it must be completed in 52 weeks or less; it must enhance the claimant's employability; and the claimant must possess the necessary aptitudes and qualifications to reasonably assure completion of the training. Miscellaneous (MISC) 40 of the BPR states that, "The provisions of the law regarding Approved Training are intended to apply to those individuals whose prospects for continuing employment for which they are fitted by training and experience are minimal and are not likely to improve in the foreseeable future in the locality in which they reside or are seeking work." Since the objective of approved training is to improve employability by the acquisition of a useful and needed skill and thereby result in a stronger attachment to the labor force, the normal availability provisions are set aside. Regulation R6-3-1809 outlines claimant qualifications for approved training and requirements for both the training facility and course content. The claimant is interviewed by a deputy to ensure that all requirements are met. The deputy issues a determination holding the claimant eligible or ineligible for approved training.

Although a claimant in approved training is not required to meet the availability provisions of the law, he is subject to disqualification based on his reason for separation from employment. For example, a claimant who quits his job to go to school is considered to have quit without good cause in connection with the employment. The claimant would be disqualified beginning with the week of the separation and continuing until he became reemployed and earned an amount equal to five times his weekly benefit amount. The claimant may be eligible for approved training, but would not receive benefits because of the disqualification. After a determination of eligibility for approved training has been made, the claimant is not required to return to the local office. A unit in the Central Office called the Special Programs Unit processes claims for individuals in approved training. Weekly continued claims are submitted through the training facility to the Special Programs Unit. To be eligible for benefits while in approved training, the claimant need only be enrolled in and satisfactorily pursuing the approved course of instruction.

Ability to Work (Step 6c, Chart 2). In addition to being available for work, Section 23-771, ARS, specifies that a claimant must be physically able to work in order to be eligible for benefits. A&A 235.05 of the BPR defines ability, "as the possession of the physical capabilities necessary to the performance of suitable work for which one is reasonably fitted. Conversely, inability to work refers to a lack of physical ability to such a degree as to prevent the acceptance of work for which one is reasonably fitted which renders him unemployable." When the issue of ability to work arises, the claimant would be requested to obtain a medical statement regarding his physical condition and current ability to work if he had been under treatment by a physician. When the claimant's physician certifies that he is unable to do any work, the claimant is determined to be ineligible for benefits. Despite any protestation by the claimant that he is able, the medical evidence would have greater weight. Frequently a physician will state that the claimant may return to work, but with restrictions. For example, a construction worker may be released to work but restricted from doing heavy lifting. As with availability, the claimant's attachment to the labor market in relation to his ability to work must be assessed objectively. If the claimant had no skills other than construction work, and were unwilling to seek or accept anything else, the deputy would consider him unable to work as his physical condition would unduly restrict his ability to accept work which he is qualified to perform. If the construction worker were willing to seek and accept work as a security guard until his physical condition permitted him to return to his regular employment, he probably would be considered eligible, since suitable work within his physical restrictions would be available. A&A 190.1 also states that, "The best and most frequently advanced proof of ability is evidence that work has actually been done by the claimant despite his physical disability. In the absence of evidence that the claimant's condition has altered, this is proof of ability." An example is that of a handicapped claimant who, by virtue of past employment, has demonstrated ability to work in spite of his physical condition.

As with availability, a determination of ineligibility based on ability to work can be for a definite or indefinite period. An example of a definite period of ineligibility would be the claimant who was sick a particular week with a cold. An indefinite period of ineligibility might be applied to the construction worker who could do no heavy lifting and was unwilling to accept other types of work he was capable of performing.

Refusal of Suitable Work (Step 6d, Chart 2). Paragraph A, Section 23-776, ARS, provides that, "An individual shall be disqualified for benefits if the department finds he has failed without cause either to apply for available, suitable work, when so directed by the employment office or the department, or to accept suitable work when offered him, or to return to his customary self-employment when so directed by the department." The disqualification begins with the week of the refusal and continues until the claimant is reemployed and earns an amount equal to eight times his weekly benefit amount. A key word in the statutory provision is the word "suitable." The work must be suitable before any disqualification can be imposed. Paragraph B, Section 23-776, ARS, specifies factors to consider in determining suitability, such as the degree of risk involved, physical fitness, experience and training, length of unemployment and prospects of other work, distance to work, whether the working conditions are prevailing, protection of the worker's preference regarding acceptance of union work, and whether the offered work is vacant due to a labor dispute.

The purpose of the disqualification for failure to accept suitable work is to ensure that payment of benefits is made only to persons who are unemployed through no fault of their own. Even though the initial separation may have been nondisqualifying, the claimant has a continuing responsibility to demonstrate his attachment to the labor force. The claimant must maintain continuing eligibility by being able and available for work. Obviously, lack of either physical ability to work or availability for work would preclude acceptance of work. Occasionally it becomes difficult to determine the appropriate issue. For example, a claimant may refuse an offer of suitable work because she has no babysitter to care for her children. Since the work was suitable, a deputy might disqualify the claimant for refusing the offer of work, but the primary issue is that the claimant is not available for work because she does not have babysitting arrangements. In this example, the claimant's personal circumstances do not leave her free to seek and accept full time employment; she should be held ineligible for an indefinite period because of her lack of availability, but she should not be disqualified for the refusal of work as she had cause.

In a refusal of work issue, there are three possible determinations that can be made. A deputy may: disqualify the claimant for refusing suitable work without cause; hold the claimant eligible for refusing suitable work with cause

(invariably there is an accompanying able or available issue); or hold the claimant eligible for refusing unsuitable work. The "cause" provision for a work refusal differs from voluntary leaving in that cause does not have to be work connected. The disqualification for a work refusal is fairly severe. However, the entire system could be jeopardized if laxity in efforts to become reemployed were not severely penalized.

Fraud (Step 6e, Chart 2). Section 23-778, ARS, provides for disqualification from benefits for fraud. This type of disqualification is called an "administrative penalty," and can be used to disqualify a claimant from 4 to 52 weeks. Section 23-778 provides that, "Any person who, ...has made a false statement or representation of a material fact knowing it to be false, or knowingly failed to disclose a material fact with intent to obtain benefits...shall be disqualified ...as determined by the department according to the circumstances in each case."

Before an administrative penalty can be applied, the following four elements must exist: a false statement; the misstatement must be material; the claimant must have made the statement knowingly; and the statement must have been made with intent to collect benefits. After determining that all four elements exist, it is necessary to determine the appropriate disqualification. Benefit Policy Rule R6-3-3-54340 prescribes: a 4 week disqualification for each week of unreported earnings, up to a maximum of 52 weeks; and a 10 week disqualification for false statements on separation, refusal of work or other eligibility issues. The disqualification begins with the first valid claim filed after discovery of the fraud. Fraud prevention and detection is a responsibility of all levels of the organization, and fraud may be detected at any level of the department. Separation and eligibility issues are discovered more frequently by the local office, whereas unreported earnings normally are discovered by the Central Office through audit.

Waiting Week (Step 7, Chart 2)

The previous pages have outlined the issues which may be encountered at the time a continued claim for benefits is presented. Claimants are subject to disqualification or a determination of ineligibility based on the law. When that occurs, the claim is stamped "disqualified," annotated with the appropriate issue code, and a determination issued explaining the reason benefits are being

denied. If the claimant is eligible in all respects, there is one more condition to be met before payment is made.

Section 23-771, ARS, provides that the individual shall serve a valid "waiting week." This is explained to the claimant in the pamphlet, "What You Should Know About Unemployment Insurance In Arizona" as follows: "The first time you come in to file for unemployment insurance, you file an initial claim. When you report thereafter, you certify for completed weeks of unemployment. The first week during which you meet all eligibility requirements is known as the 'waiting week', and no unemployment insurance is payable for that seven-day period. This waiting week is required by law. Only one waiting week is necessary during your benefit year." (A waiting week is not required when the claimant files a "transitional" claim. This occurs when a claimant files a payable claim for the last week of a benefit year, and then files without interruption a new claim to establish a new benefit year. A claimant is not required to serve a waiting week on a transitional claim until there is a break in the sequence of payments. If the last week of a prior benefit year was taken as a waiting week and the claimant files a transitional claim, no waiting week is required during the new benefit year.)

Processing Continued Claims and Overpayment Edit (Steps 8 and 9, Chart 2)

Continued claims are sent to the Processing Unit at the Central Office daily. Processing scans the claims for obvious errors, and routes them to EDP for keypunching and inclusion in the benefit payment run.

Before any claim is paid, each claimant's record is checked for overpayments. A "stop" is placed on the computer for each claimant who has an outstanding overpayment. The stop will cause any continued claim to "reject," so that recoupment action may be taken by the Overpayment Unit. Overpayments fall into three categories: administrative, which are attributable to agency error; fraudulent, which are attributable to the claimant and involve a false statement or deliberate concealment of a material fact; and non-disclosure, which are attributable to the claimant but not considered fraudulent. Regardless of the type of overpayment, the claimant is requested to make restitution. In the case of a fraudulent overpayment, an administrative penalty also is considered.

Section 23-788, ARS, authorizes the waiver of recoupment of an overpayment if the overpayment was without fault on the part of the claimant, and "if recoupment would either defeat the purpose of this chapter or would be against equity and good conscience." Consequently, the administrative overpayment is the only type for which recoupment may be waived, as the claimant is not without fault in a fraudulent or non-disclosure overpayment.

If the claimant still is filing continued claims after the discovery of the overpayment, an "offset" process is utilized to effect recoupment. For example, assume the claimant has an \$85 administrative overpayment which was established on August 5, 1976. On August 12, 1976 the claimant files a continued claim for the week ending August 7, 1976. His weekly benefit amount is \$85. The claim is submitted to the Overpayment Unit as an "offset" claim. The Overpayment Unit clears the overpayment by using the benefits to which the claimant is entitled for the week ending August 7, 1976 to offset the overpayment. The claimant does not have a choice in using benefits as an overpayment offset. If an overpayment exists, and compensable claims are filed, they are used as offsets to effect recoupment. When the overpayment has been recouped, the "stop" will be lifted so that future claims may be processed routinely.

Payment of Benefits (Step 10, Chart 2)

If a claimant is found eligible for benefits, based on the procedure outlined above, then payment is made through a computer program. Benefit checks are issued based on information keypunched into the continued claim and contained in the stored record of the claim. Although the process of "paying benefits when due" can be extremely complicated, federal regulations require that 80 percent of claims submitted for initial payment are paid within 14 days of the week ending date of the claim.