CHAPTER 6
REGISTRATION / CERTIFICATION / REPORTING

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2.6.1 INTRODUCTION

Registration, certification, and reporting requirements are eligibility issues as distinguished from disqualification issues.[1] The duration of ineligibility is for that period of time that the claimant has not complied with the requirements. The period ends once the claimant complies with the Department of Labor's requirements, in other words registers, or reports, or certifies in accordance with proper procedures.

Pursuant to Labor Law § 596, a claimant shall file a claim for benefits within such time and in such manner as the Commissioner prescribes. Article 18 of the Labor Law gives the Commissioner authority to implement rules, policies, and procedures to carry out the duties and functions of the Department of Labor. The Commissioner's regulations for registration, certification and reporting are set forth in 12 NYCRR Part 473.

2.6.2 DEFINITIONS

Registration means filing a benefit claim.[2] This is accomplished by one of two methods: calling the automated telephone service or use of the Internet via the Department of Labor's website. A claimant is advised at the end of the registration process as to whether they have successfully filed a claim. Claims for benefits are made effective Monday of the statutory week in which they are filed. A "statutory week," is seven consecutive days beginning with Monday.[3]

The claimant has from Monday through Friday to file an original claim for benefits.[4] After a successful filing of a claim, the claimant must also follow the certification procedures in order to receive benefits for the week in which the original claim was filed.

Certification[5] is the process by which a claimant requests a weekly payment of unemployment insurance benefits. Certifying for benefits can be done using the same methods used to register

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[1] Disqualifications must be broken by obtaining subsequent employment and earning remuneration totaling 10 times the weekly benefit rate payable on the claim before becoming eligible for benefits in the future.

[2] The regulations refer to various different types of claims. A "subsequent claim" means a claim is being made after a lapse of time from when the original claim was made in which no effective days were accrued or there were weeks of ineligibility. An "additional claim" means a claim is being made after a lapse due to employment. A "reopened claim" means the claim is being made after a lapse due to reasons other than employment.

[3] *See* Labor Law §519

[4] *See* 12 NYCRR 473.1(b). For a subsequent claim, the claimant can file at any point during the full seven-day statutory week. *See* 12 NYCRR 473.1 (c) (1).

[5] *See* 12 NYCRR 473.2.

for benefits: the telephone interactive system or the Internet. A claimant is required to certify within the seven-day period following the statutory week in which the claimant is seeking benefits.[6] A claimant can certify as early as Sunday, which is the last day of the statutory week in which the claimant is seeking benefits. When certifying, the first and last dates of the week for which the certification applies are automatically stated or set forth on the screen so the claimant is aware of the statutory week for which he or she is certifying. A claimant who fails to certify within the seven-day period will not be eligible for future benefits until the claimant registers, that is, until the claimant files a subsequent valid claim for benefits.[7]

Reporting[8] is either a claimant's appearance in person for a meeting or interview at a Department of Labor office or at a designated re-employment services office or a response to a request(s) for information in connection with his or her claim for benefits. A claimant who fails to report is subject to being held ineligible until such time as the claimant does report.[9] Reporting also applies to situations involving claimants who are out of the country and are unable to report immediately for work in their usual labor market.[10]

2.6.3 FAILURE TO REGISTER

Generally, the period of time a claimant is out of work cannot be claimed for credit for unemployment insurance purposes until such time as the claimant properly files a claim. A failure to register determination may be made when the claimant waits more than one statutory week after separating from employment to file an original claim and thereafter requests benefits from the date of the separation to the date of the claim. This is commonly referred to as a request to "backdate" the claim.

A failure to register can also occur after a claimant fails to certify for a week, creating what is called a lapse or break in the claim, and then does not claim benefits for one or more weeks thereafter. The failure to claim benefits for the first week is treated as a failure to certify and the failure to claim benefits after the first week is treated as a failure to register.

For example: claimant registers for an original claim made effective Monday, August 1, 2016, certifies for that week and for the next three statutory weeks, August 8 to August 14, August 15 to August 21 and August 22 to August 28. The claimant then does not certify for benefits for the

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[6] *See* 12 NYCRR 473.2(a).

[7] *See* 12 NYCRR 473.2(c).

[8] *See* 12 NYCRR 473.3.

[9] *See* 12 NYCRR 473.3(d).

[10] *See* Part II, Chapter 7, Foreign Travel

statutory week of August 29 to September 4, creating a break in claim (which would be considered a failure to certify issue). The claimant then makes no claim for benefits for statutory weeks ending September 11, 18 and 25. If the claimant registers a subsequent claim effective October 3 and seeks to receive benefits for the four-week period beginning Monday, September 5 through Sunday, October 2, those particular weeks are considered a failure to register.

EXCUSING A FAILURE TO REGISTER

A failure to register may only be excused upon presentation of facts and circumstances that constitute good cause.[11] As discussed below, good cause can be found where the claimant received misinformation from the Department of Labor or where the claimant has been misled by the employer about the status of his or her employment. Good cause may also be found in circumstances where, despite diligent efforts on the claimant's part, technological problems prevented the claimant from registering his or her claim or where the claimant's limited English proficiency prevents the claimant from understanding the original filing process and the evidence establishes that the delay in filing a claim was through no fault of his or her own.

MISLED BY EMPLOYER AS TO EMPLOYMENT STATUS

A claimant who reasonably believes and relies upon misleading information that he or she is still employed or that work is imminent has in effect been dissuaded or deterred from filing a claim. This excuses a failure to register.[12] For example, good cause has been found where an employer failed to inform a claimant of his discharge while on medical leave and led the claimant to believe that he would return to work;[13] where an employer informed a claimant that the company needed a period of time to determine whether accommodations were available and subsequently terminated a claimant because no work was available within his or her restrictions;[14] where an

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[11] 12 NYCRR 473.1 (g).

[12] *See, e.g.,* Appeal Board No. 590854 ("It is well-settled that absent misinformation from a Department of Labor representative causing the claimant's failure to register sooner, or evidence that the employer misled the claimant regarding the status of employment, a claimant is not entitled to benefits for weeks when he/she has not properly certified or registered").

[13] *Matter of Beck,* 72 A.D.2d 867 (3d Dep't 1979) (representations by employer that claimant will be able to return to work after a period of disability and production of medical release to be able to return to work then discharged claimant once medical document presented established good cause to backdate the claim); *but see,* Appeal Board No. 580884 (claimant waited to file her claim in part based on her own unverified assumption, and in part based on the employer's statement that it would return her to employment upon submission of a satisfactory medical clearance. The claimant understood that she was not working after March 19, 2014. The Board concluded that the employer's statement regarding a potential return to employment at some future point does not constitute misinformation as to her employment status after March 19, 2014 that would excuse the claimant's failure to timely register for benefits).

[14] Appeal Board No. 586988 (supervisor sent pregnant claimant home until employer could determine if work available within claimant's restrictions, week later no accommodation available, supervisor assisted claimant in filling out FMLA

employer misled an employee into believing he would return to work after meeting with a supervisor but was then discharged,[15] where an employer misled claimant into believing his job would continue uninterrupted under a new owner but later told him he would not resume work until a later date,[16] where an employer misled and strung along a claimant by having the claimant call in every day for work and advising claimant he could not file a claim until he was laid off,[17] where an employer continued to make false promises that the claimant would be rehired the following week and advised claimant not to file a claim,[18] and where a claimant was promised another assignment by a staffing agency, which did not materialize.[19]

However, a claimant's misplaced reliance on an employer's or a union's belief regarding the claimant's eligibility for benefits does not excuse a failure to register, as a claimant is responsible for contacting the Department of Labor to inquire about his or her eligibility status.[20] An employer's

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forms and told claimant she would be receiving disability pay then claimant received ineligibility information from carrier due to termination of employment, good cause found to back date claim).

[15] Appeal Board No. 590854.

[16] *Matter of Bashe,* 122 A.D.2d 415 (3d Dep't 1986) (claimant was misled that his position as a magazine editor would continue with new owner as former owner going through Bankruptcy. Claimant told he would not be paid for last week of work with former owner and then claimant told he would need to wait an additional week before starting with new owner).

[17] *Matter of Maniace,* 88 A.D.2d 1025 (3d Dep't 1982) (claimant's failure to register was excused where testimony established the employer misled the claimant about available work assignments when the claimant called in for an extended period of time and that he could not claim benefits until laid off then tells claimant he was laid off on the first day that his unemployment began).

[18] Appeal Board No. 551066 (claimant was a managing director of a hair replacement company and was let go from his employment but did not immediately register because employer told claimant over a period of 12 weeks that he would be going back to work at the beginning of the following week and not to file a claim).

[19] Appeal Board No. 579109 (claimant, a registered nurse, was last employed by a staffing agency when her assignment ended and thereafter, the employer repeatedly informed the claimant that it would place her in another assignment. The Board concluded that the claimant had good cause for her failure to register as required as the claimant had every reason to believe that the employer staffing agency would follow through on its promises to provide her with another assignment).

[20] *Matter of Walker,* 151 A.D.2d 897 (3d Dep't 1989) (claimant's reliance on misinformation provided by the employer about the claimant's potential eligibility for benefits does not constitute good cause as claimant could have clarified his eligibility status by contacting the Department of Labor); *Matter of Katz,* 191 A.D.2d 865 (3d Dep't 1993) (failure to register not excused where claimant was advised by a counselor for the employer not to do so until her severance payments ceased and claimant made no effort to clarify her status by contacting the local unemployment office); *Matter of Carnellos*, 21 AD3d 636 (3d Dep't 2005) (claimant was discharged from her employment as a secretary for a high school and waited to apply for benefits until over a month later because she was told by the employer's bookkeeper that she could not file for unemployment); Appeal Board No. 551952 (when claimant separated from employment she was told by the union and the employer that she would not be eligible for unemployment benefits and did not contact the Department of Labor because she trusted what she was told. Board held that the misinformation as to eligibility and failure to contact the Department of Labor did not constitute good cause to excuse the claimant's failure to register);

failure to tell the claimant, at the time of separation, to file a claim for benefits also does not constitute good cause to excuse the claimant's failure to register.[21]

MISINFORMATION FROM DEPARTMENT OF LABOR

Misinformation by the Department of Labor excuses a claimant's failure to register.[22] Good cause excusing a failure to register has also been found where the Department does not provide enough information to a claimant to inform them of the requirement to file a new claim at the expiration of a benefit year[23] or does not provide effective help to a claimant in his or her attempts to register a claim.[24]

In contrast, a claimant who misunderstands information received from a Department of Labor representative is not excused from following the proper procedures.[25] A claimant's unfamiliarity

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Appeal Board No. 566056 (claimant's reliance upon employer's statement that she could file a claim for benefits only after signing separation agreement was misinformation about her eligibility and did not excuse her failure to register).

[21] [omitted]

[22] Appeal Board No. 577054 (claimant's failure to register excused where he relied on misleading information from Department of Labor that he had to be "officially" terminated prior to being eligible for benefits); Appeal Board No. 540465 (good cause existed to backdate a claimant's claim where employer told claimant he could not file a claim for benefits for approximately one month and Department of Labor sent the claimant a letter stating that there was a meeting at the end of the month to review "how and when to file for unemployment insurance" since the delay in filing was based on incorrect employer information that claimant could have reasonably believed was supported by Department of Labor); Appeal Board No. 549495 (good cause to excuse failure to register based on misinformation was found where claimant could not register claim after break in claim, received message stating that his claim was under review and contacted a Department of Labor representative who only told the claimant to keep trying and to continue to certify for benefits, without further instruction).

[23] Appeal Board No. 588216 (good cause to backdate a claim was found where there was no evidence that the claimant was ever advised of the specific date on which her benefit year ended and was not advised to file a new claim); Appeal Board No. 561412 (citing Appeal Board 555194A); Appeal Board No. 552286 (good cause existed to excuse failure to register where Department of Labor's telephone recorded message informed claimant he had exhausted his benefits, received no further instructions and was unable to speak to a representative when he attempted to contact the Department).

[24] Appeal Board No. 582331 (good cause existed to excuse claimant's failure to register where claimant was unable to access the online system and despite numerous attempts to contact the Department of Labor, he was not given effective help and was never able to create his government identification which was needed).

[25] Appeal Board No. 564955 (no misinformation where claimant waited to file a claim for four weeks based on Department of Labor employee's statement that he would have to wait until overpayment was paid off before he could receive benefits as his failure to file was based on his misunderstanding of the information he was provided); Appeal Board No. 558168 (claimant's misunderstanding of Department of Labor's instructions did not excuse his failure to register).

with the registration process,[26] a misunderstanding of the law or a belief that he or she was not entitled to benefits[27] also do not constitute good cause reasons to excuse his or her failure to register.

For a practice tip on how to develop the record in circumstances where the claimant alleges misinformation, see Misinformation from the Department of Labor in the Failure to Certify section, below.

TECHNOLOGICAL PROBLEMS

When the claimant alleges he or she was unable to register due to problems with the phone and/or internet, or alleges an inability to reach a representative to get assistance, good cause exists to backdate a claim if the evidence establishes that the claimant properly followed instructions given,[28] made diligent, concerted efforts to utilize the Department of Labor system or contact a representative, and that the failure to register was through no fault of his or her own.[29]

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[26] *Matter of Newman* 23 A.D.3d 816 (3d Dep't 2005) (claimant did not inquire about his status despite not receiving benefits and his misunderstanding information in claimant handbook about reopening his claim); *Matter of Nocera,* 12 A.D.3d 769 (3d Dep't 2004) (Court held that unfamiliarity with both registration and certification processes does not excuse failure to claim benefits. However, current Board decisions require evidence that the claimant was provided information or put on notice of how to certify for benefits in order for a failure to certify determination to be upheld); *Matter of Troise,* 45 A.D.3d 1163 (3d Dep't 2007) (Court held ignorance about registration process until claimant spoke to attorney not good cause to back date claim); Appeal Board No. 397309 ("it is implicit in the claimant's request to have his claim back dated that he was ready, willing, and able to perform some sort of work during the period under review" and that "he knew or should have known that the result of his doctor's examination may result in a change in his disability status and could have contacted the local office for instructions").

[27] Appeal Board Nos. 580199, 547446A, 542079, and 489675; *Matter of Weinstein,* 60 A.D.3d 1228 (3d Dep't 2009) (claimant's proffered excuse for the one-year delay in filing for unemployment insurance benefits--namely, his belief that the severance payments he was receiving rendered him ineligible for such-- did not rise to the level of good cause especially in view of the fact that claimant was not provided with any misinformation by a Department of Labor representative and admittedly failed to inquire as to his eligibility); Appeal Board No. 565097 (claimant's delay was due to his erroneous belief that for the period at issue he was receiving total disability benefits when, in fact, he was receiving partial disability benefits); Appeal Board No. 557250 (no good cause to excuse claimant's failure to register where she delayed filing claim based on her erroneous belief that she was not entitled to benefits and failed to contact the Department of Labor to inquire about eligibility).

[28] *Matter of DeLelio*, 19 A.D.3d 917 (3d Dep't 2005) (no good cause to excuse failure to register where evidence established that claimant kept using wrong phone number to attempt to register for benefits); *Matter of Collier*, 19 A.D.3d 792 (3d Dep't 2005) (no good cause to excuse failure to register where claimant misunderstood accurate instructions on the automated registration system); Appeal Board No. 573733 (no good cause where claimant disregarded instructions to call the Department of Labor Wednesday through Friday to complete her claim and instead merely attempted to certify for benefits on a Thursday and Saturday).

[29] Appeal Board No. 554526 (good cause existed to excuse claimant's failure to register for two-week time period as evidence established he made several unsuccessful attempts to claim benefits on line and was unable to access the telephone system despite several telephone calls to the correct number); Appeal Board No. 546106 (claimant's failure to register was excused as evidence established that despite her diligent efforts to obtain information, she was unable to reach anyone from the Department of Labor); Appeal Board No. 547274 (good cause existed to excuse claimant's

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Good cause may be found excusing a delay in filing an original claim for benefits if the delay is due to a claimant's lack of English proficiency and the evidence establishes that the delay was through no fault of the claimant's own.[30]

OTHER REASONS

Misinformation from a source other than the Department of Labor does not excuse a failure to comply with registration requirements. For example, the Board has held that a delay in filing or completing a claim, may not be excused when the delay was attributable to the claimant's reliance upon an attorney's advice not to provide the Department of Labor with a reason for her job separation.[31] Additionally, a claimant's desire to obtain legal advice regarding the consequences of answering any Department of Labor questions does not constitute good cause excusing a failure to register.[32]

There is also no good cause to excuse a failure to register where the claimant's failure is based on his or her own mistaken belief about how the claims filing process works,[33] a belief that the

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failure to register were claimant telephoned Department several times to inquire about registration requirements and could not reach a representative, twice started to file a claim on line but did not know how to answer certain questions, and went to Department of Labor website but could not find answers to her questions); Appeal Board No. 556036 (claimant's failure to register was excused where he was initially blocked from doing so by the Department's electronic claims system and then he received inadequate assistance from Department personnel despite his concerted efforts to obtain assistance); *but see,* Appeal Board No. 565266 (no good cause where claimant did nothing to follow up for over a month and a half after his initial attempt to file a claim).

[30] Appeal Board No. 560815 (because of claimant's limited English proficiency he did not understand questions while attempting to submit application on line, resulting in his many attempts to be timed out, he also did not understand the questions on the telephone system and did not know how to obtain assistance in his native language); Appeal Board No. 557606 (claimant was excused from complying with registration requirements when he was unable to complete his claim for benefits due to language barrier and precluded him from being able to navigate the Department of Labor telephone system sufficiently to complete his claim); *but see,* Failure to Certify, infra: Appeal Board No. 570344 (a failure to comply with certification requirements cannot be excused because of a language barrier).

[31] Appeal Board No. 549679 (no good cause to backdate a claim where claimant was advised by her attorney not to provide the Department of Labor with a reason for her job separation as the Department of Labor correctly informed her that she needed to provide a reason for her job separation before it could process her claim for benefits).

[32] Appeal Board No. 569715 (no good cause to backdate a claim where claimant delayed filing her claim because she was concerned about the consequences of her answers to the Department of Labor and wanted the assistance of legal counsel).

[33] Appeal Board No. 554841 (no good cause to excuse a failure to register where claimant's delay was a result of his mistaken belief that he could file a claim at any time and have it backdated); Appeal Board No. 548341 (no good cause where claimant did not file a claim because he was in transit and believed he had to wait to file claim until after a waiting week).

previous employer not give a positive recommendation if he filed a claim for benefits,[34] claimant's desire to focus on other matters,[35] a belief that a new job would be forthcoming,[36] or a belief that he or she is not entitled to benefits.[37]

2.6.4 FAILURE TO CERTIFY

A claimant must certify, or claim benefits, during the seven-day period following the statutory week for which he or she is requesting benefits.[38] A failure to certify may only be excused where the claimant establishes he or she had a good cause reason for the failure.[39]

A claimant cannot be held accountable for compliance with weekly certification requirements, including certifying for the waiting week, unless the evidence establishes that he or she has been specifically or constructively advised of the requirement or has otherwise admitted knowledge of the requirement at or before the start of the statutory week at issue.[40] Information regarding the requirement to certify is provided to a claimant during the online filing process and in the claimant's

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[34] *Matter of Jennings,* 223 A.D.2d 899 (3d Dep't 1996) (no good cause where claimant did not file a claim for benefits after he was discharged because he believed it would increase likelihood of obtaining a favorable job recommendation).

[35] Appeal Board No. 561407 (no good cause to excuse failure to register where claimant delayed in filing a claim because he was filing grievances over his termination from employment).

[36] *Matter of Foertsch,* 272 A.D.2d 739 (3d Dep't 2000) (no good cause where claimant failed to immediately register a claim because he was hopeful he would find work); Appeal Board No. 544978 (no good cause excusing failure to register where claimant delayed because was seeking employment and believed a job offer was forthcoming).

[37] *Matter of Maier,* 207 A.D.2d 932 (3d Dep't 1994) (no good cause to excuse a failure to register because of claimant's own mistaken belief about eligibility); Appeal Board No. 556819.

[38] *See* 12 NYCRR 473.2(a): Each claimant shall certify to his/her unemployment during the seven-day period for such certification as specified by the commissioner, following a statutory week in which the claimant experienced more than three days of total unemployment and has not earned more than the amount set forth in Section 523 of the Unemployment Insurance Law and at such other times as the commissioner may direct; and 12 NYCRR 473.2(c): A claimant who fails to certify for a benefit period within the seven-day period for such certification shall not be eligible for that benefit period and claimant shall not be eligible for future benefit periods until the claimant files a subsequent claim in accordance with section 473.1 of this Part; *see also, Matter of Prieto,* 255 A.D.2d 859 (3d Dep't 1998)("Certifying for benefits in accordance with the Labor Law and applicable regulations is a necessary prerequisite to eligibility for benefits").

[39] 12 NYCRR 473.2(e): The failure to certify in compliance with this section may be excused by the commissioner upon proper presentation by the claimant of the facts and circumstances if it is shown to the commissioner's satisfaction that they constitute good cause.

[40] Appeal Board No. 581971 (A "claimant cannot be held to the standard of certifying for weekly benefits, including for the waiting week, unless she either has been advised of [t]his requirement or has admitted knowledge of this requirement at or by the start of the period before us"); Appeal Board 557728 ("In the absence of knowledge of the requirement that she certify weekly for benefits, there is good cause to excuse this failure").

handbook. A claimant is considered to have constructive knowledge of information contained in the handbook so long as the claimant received the handbook or knew of its availability on line prior to the weeks during which the failure to certify occurred.[41]

EXCUSING A FAILURE TO CERTIFY

Good cause excusing a failure to certify can be found where the claimant received misinformation from the Department of Labor or in circumstances where, despite diligent efforts on the claimant's part, technological problems prevented the claimant from certifying.

MISINFORMATION FROM THE DEPARTMENT OF LABOR

As with a failure to register, good cause exists to excuse a failure to certify if the evidence establishes the claimant received misinformation from the Department of Labor and relied on that misinformation to his or her detriment.[42] Additionally, a claimant must be notified of the requirement to continue to certify after receipt of an unfavorable determination while he or she is waiting for a hearing or after receipt of an unfavorable decision after a hearing or appeal to the Board.[43]

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[41] *Matter of Nigro*, 47 A.D.3d 1040 (3d Dep't 2008) (having received the Claimant Information Handbook, the claimant was responsible for reading that document and complying with its requirements); Appeal Board No. 567550 (claimant who declined mailing of the handbook when filing claim on line is considered to have constructive knowledge of the information it contains).

[42] Appeal Board No. 548341 (good cause excusing a failure to certify where claimant's credible first hand testimony established that Department of Labor representative told claimant not to certify for benefits because he had been disqualified from receiving benefits); Appeal Board No. 585936 (good cause existed to backdate claim where claimant saw no instructions online regarding claiming his waiting week, checked his claim repeatedly and was advised each time that it was "pending" with no further action to take, and was unable to reach a live person at the Department of Labor to assist him with his claim when he contacted them twice during what would have been his waiting week); Appeal Board No. 541400 (good cause existed to backdate claim where claimant repeatedly accessed the Department's telephone system but was unable to claim benefits because her claim was "pending" and spoke to a representative who advised claimant to write to the Department but gave the claimant no reason to believe there was any urgency to do so).

[43] Appeal Board No. 555055 (good cause excusing a failure to certify was found when claimant stopped certifying after receiving an unfavorable determination, had not received the claimant handbook and instructions on the determination only instructed the claimant only to continue to follow reporting requirements, not to continue to certify); Appeal Board No. 584036 (good cause excusing a failure to certify was found when claimant stopped certifying after receiving an unfavorable determination, had not yet received the claimant handbook and did not understand the instructions regarding reporting requirements on the determination); *but see,* Appeal Board No. 567683 (no good cause where claimant received handbook containing instructions and called Department of Labor to clarify discrepancy between instructions in handbook and language on the unfavorable determination regarding reporting requirements).

In contrast, a failure to certify is not excusable if it is due to the claimant's misunderstanding or erroneous belief about of his or her eligibility status[44] or the requirement to certify,[45] or an erroneous belief that he or she should receive confirmation of eligibility for benefits prior to certifying;[46] even where attempts to contact the Department of Labor for clarification of the misunderstanding were unsuccessful.[47]

Practice Tip:

When a claimant alleges that his or her failure to certify or register is based on misinformation from the Department of Labor, the credible evidence must establish:

- the source of the alleged misinformation;
- the specifics of the information received;
- evidence that the information was actually inaccurate, incomplete, or misleading; and
- evidence that the claimant reasonably relied upon the misinformation to his or her detriment.

Additionally, if the claimant alleges misinformation for the first time at the hearing, the hearing should be adjourned so that the Commissioner of Labor has the opportunity to respond to the allegation. The Commissioner of Labor may present business records indicating dates and times of claimant phone calls, the individual with whom the claimant allegedly spoke or testimony from a supervisor indicating how employees are trained to advise claimants under the particular circumstances. The judge will be required to make a credibility determination about whether the claimant was provided misinformation.

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[44] Appeal Board No. 547446A (no good cause where failure to certify based on misunderstanding about eligibility status); *Matter of Prieto,* 255 A.D.2d 859 (3d Dep't 1998) (no good cause excusing a failure to certify where claimant stopped certifying after receiving an unfavorable decision from hearing section while awaiting decision on appeal because he thought he would ultimately be unsuccessful on appeal).

[45] *Matter of Weier,* 30 A.D.3d 951 (3d Dep't 2006) (no good cause to excuse claimant's failure to certify where he had received handbook and did not contact the Department of Labor to clarify any questions he had regarding the process); Appeal Board No. 566280A (no good cause where claimant contended he may have misunderstood instructions where evidence established that he was provided with accurate, clear, and precise information about the need to continue to certify for benefits).

[46] Appeal Board No. 541016 (no good cause to excuse claimant's failure to certify where she received the handbook instructing her to certify and she failed to do so based on her erroneous belief that she needed to wait to receive a response from the Department of Labor prior to certifying).

[47] Appeal Board No. 547446A (no good cause to excuse failure to certify where claimant waited because he believed he would receive confirmation of his eligibility for benefits and his several attempts to contact the Department within a two to three-week time period were unsuccessful); ; but see *Matter of Fleischer*, 45 A.D.3d 1094 (3d Dep't 2007) (claimant, an adjunct professor, filed a claim and then received a notice to contact the DOL; she made several unsuccessful attempts and then, having received an offer of employment for the following school year, did not certify as she was uncertain of her eligibility; the Court found good cause based, in part, on the fact that she had received the notice to contact the DOL).

TECHNOLOGICAL PROBLEMS

A claimant's failure to certify may be excused if the evidence establishes that despite diligent efforts on the part of the claimant, he or she experienced technological problems with the Department of Labor's telephone or online system which prohibited a certification from being made, so long as this failure was through no fault of his or her own.

For example, a failure to certify has been excused where a claimant attempted multiple times to certify for benefits on the telephone and internet but had difficulty doing so. The claimant initially received a message stating the system was experiencing a high call volume and instructing her to call back. Despite the claimant's attempts to access the telephone system from different phones she was never able to make a certification. The claimant also sought assistance from a friend to certify via the internet and was unable to do so because the system would not accept her answers and would make her start anew. The Department's records showed the claimant called the certification line multiple times and the calls ended for various reasons, such as "business logic kick out," "exceeded attempts," or "system error." The Board held that the claimant exercised sufficient diligence to satisfy her certification obligation, as the circumstances of her efforts establish that her failures were beyond her control.[48] Similarly, where a claimant becomes "locked out" of the system, his or her failure to certify is excused.[49]

However, no good cause exists when the failure to certify is based on the claimant's failure to follow the correct procedures.[50] Additionally, the claimant's assertion that he or she attempted to certify but was unable to do so may be insufficient to overcome business records provided by the Department of Labor showing the date, time and method of the claimant's certifications, the history of the claimant's telephone calls to the Department of Labor, and statistics establishing that there were no problems with the web or tele-service certifying systems during the periods at issue that would have prevented the claimant from completing certifications.[51]

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[48] Appeal Board No. 562884; Appeal Board No. 554526 (claimant attempted several times to claim benefits via the Internet and the system would not let him claim benefits. He made several telephone calls to the 1-888 telephone number and another telephone number. Board held that claimant had good cause for his failure to certify and register for benefits during the two-week period at issue).

[49] Appeal Board No. 568748 (good cause existed to excuse the claimant's failure to certify from December 1, 2011, through June 9, 2012, as the Department of Labor's system locked him out) (citing Appeal Board No. 562884).

[50] Appeal Board No. 541016 (claimant's inability to reach a representative to ask about her claim because she pressed the wrong buttons does not excuse her failure to certify); *Matter of Weier,* 30 A.D.3d 951 (3d Dep't 2006) (failure not excused where claimant called the wrong Department of Labor telephone number when she had been provided with the correct number).

[51] Appeal Board No. 579485 (citing Appeal Board Nos. 522329, 516965 and 518234).

LIMITED ENGLISH PROFICIENCY

Unlike a failure to register, a failure to comply with certification requirements cannot automatically be excused based on a language barrier or lack of English proficiency absent evidence that the claimant made affirmative efforts to obtain assistance from the Department of Labor.[52] Where the failure to comply with certification requirements is due to the lack of English language proficiency and the claimant is not provided with language translation assistance when such assistance was requested, a failure to certify may be excused.[53] Further, where a language barrier precludes a claimant from being able to navigate the Department of Labor telephone system sufficiently to complete his claim or certify for benefits, a failure to certify may be excused.[54]

2.6.5 FAILURE TO REPORT

Reporting, for the purposes of unemployment insurance, encompasses situations where (1) a claimant is directed by the Department of Labor to report in person to an office maintained by this Department, or appropriate provider of reemployment services in the area where the claimant resides, for any action in connection with his or her claim or benefit or registration for employment;[55] (2) a claimant is directed to produce certain documentation or information to evaluate claimant's eligibility for benefits,[56] or (3) a claimant travels to a country that is not a signatory of the Interstate Benefits Payment Plan.[57] A claimant may not receive credit for any period of unemployment from the day on which a failure to report occurs until he or she complies with the reporting requirement.[58] A failure to report occurs when a claimant has received clear

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[52] Appeal Board No. 570344; Appeal Board No. 579011 (non-English speaking claimant cannot be excused for misunderstanding the certification process if the Department of Labor was not advised of any language difficulty) (citing Appeal Board Nos. 520237, 575031 and 577271).

[53] Appeal Board Case No. 560815.

[54] Appeal Board Case No. 557606.

[55] *See* 12 NYCRR 473 (3) (a).

[56] Combined Appeal Board No 577749 (claimant failed to comply with reporting requirements where he refused to provide documentation requested by the Department of Labor related to his foreign travel and had no good cause for refusing to do so); Appeal Board No. 551475 (failure to report where claimant failed to produce tax returns as requested by Department because claimant had a duty to cooperate with the Department in adjudicating his claim, he was on reasonable notice that specific information was required, and he did not provide that information, which was available to him); *Matter of Ivey,* 78 A.D.3d 1409 (3d Dep't 2010) (claimant failed to comply with reporting requirements where claimant did not produce arbitration decision addressing his separation from employment as requested by Department and did not have good cause to excuse his failure).

[57] This type of situation is addressed fully in Chapter 7, Foreign Travel.

[58] See 12 NYCRR 473.3 (d).

instructions to report, is notified of the consequences for failing to do so and does not comply with the Department of Labor's request.

A failure to report may only be excused upon presentation of facts and circumstances that constitute good cause.

EXCUSING A FAILURE TO REPORT

The Board has held that good cause excusing a failure to report can be found where the claimant did not receive adequate notice of the requirement to report, where the failure to report was a result of misinformation by the Department or Reemployment Services Office,[59] other compelling personal reasons [60] or instances that would constitute substantial compliance with the Department's request for documentation.[61]

When a claimant is required to report for a meeting, the claimant must have good cause for the failure to report on the day of the meeting and must establish good cause excusing any delay in reporting after the scheduled meeting.[62]

Failure to receive proper notification of a mandatory appointment constitutes good cause excusing a failure to report.[63] However, a claimant's mere denial of receipt does not necessarily establish a failure to receive notification. There is a rebuttable presumption that a claimant has been properly notified of a reporting requirement when the Department engages in normal office procedures in processing, addressing, and mailing computer generated mailings and the notice

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[59] Appeal Board No. 569985 (good cause to excuse failure to report where claimant reasonably relied on instructions from reemployment office representative that she was not required to report until such time as she received benefits).

[60] Appeal Board No. 542437 (good cause existed to excuse the claimant's failure to report where the meeting conflicted with a religious holiday (Passover) and her delay in reporting for 12 days was because she was suffering from a partially torn tendon in her foot); Appeal Board No. Appeal Board No. 574579 (good cause found to excuse failure to report where claimant did not receive sufficient advance notice of meeting that conflicted with a prescheduled doctor's appointment); *but see,* Appeal Board No. 544071 (no good cause found where claimant failed to comply with reporting requirements for two months because he traveled out of state after his great-grandmother passed away to provide emotional support to his mother while she was settling the estate).

[61] Appeal Board No. 578090 (no failure to report where claimant was directed to provide C-8 Workers' Compensation form and claimant reasonably believed that he complied with the directive when he provided Workers' Compensation Form C-8.1 although form did not include all of the required information).

[62] Appeal Board No. 574579 (although claimant had a good cause reason for her inability to report on the day of the scheduled meeting, the claimant did not establish good cause to excuse the failure to report on the 7 days subsequent to her scheduled meeting).

[63] Generally, a claimant receives notice of a requirement to report to a meeting via letter. There are also times where a claimant is instructed via telephone that he or she required to provide information to the Department of Labor. There can be no failure to report in those circumstances unless the claimant is put on notice about the consequences failing to respond to the request. *See, e.g.,* Appeal Board No. 590745.

is properly addressed to the claimant and it is not returned by the Post Office to the Department.[64] There must be competent evidence to establish the procedures.[65]

Where a notice was correctly addressed and the claimant does not specifically deny receiving it but speculates that it may have been misplaced or disposed of,[66] where the failure to read the notice prior to the meeting was through claimant's neglect,[67] or where a claimant disregards the notice for other non-compelling reasons,[68] there is no good cause to excuse the failure to report.

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[64] *Matter of Gonzalez,* 47 N.Y.2d 922 (1979) ("where the record indicates an established and regularly followed office procedure designed to [e]nsure that notices to claimants are properly addressed and mailed, a rebuttable presumption arises that the notices are received"); Appeal Board No. 463244.

[65] Appeal Board No. 543229; *Matter of Gallahue* 234 A.D.2d 881 (3d Dep't 1996) (presumption of receipt not established where claimant credibly denied receipt and Department only provided evidence of the date on which and number of notices that were mailed did not offer evidence the claimant's notice was one of those mailed, resulting in claimant's failure to report being excused).

[66] Appeal Board No. 591079 (no good cause to excuse failure to report where claimant, who had moved shortly before mailing of notice to report, speculated that he may have misplaced or accidentally disposed of the notice without opening it due to the volume of "junk mail" he was receiving and the letter was not returned to the Department).

[67] Appeal Board No. 539644 (no good cause to excuse failure to report where claimant failed to comply with notice instructing her to report to job counseling because she neglected to read her mail in time to respond to it).

[68] *Matter of LaForgia* 54 AD3d 1090 (3d Dep't 2008) (no good cause for failure to report where claimant received two notices that he was required to attend a reemployment services orientation despite claimant's belief that he was not required to report since he had received a similar notice in error three years earlier and was scheduled to return to work within two weeks of the orientation date).