



**DEPARTMENT OF UNEMPLOYMENT ASSISTANCE  
UI POLICY & PERFORMANCE  
INTEROFFICE MEMORANDUM**

**DATE:** JULY 9, 2015

**RESCISSION(s):** All earlier policy statements and memoranda relating to the subject-matter of this memorandum are rescinded, including, but not necessarily limited to:

- Memorandum dated June 16, 2010, from Paul Connolly, Program Director, UI Policy & Performance, entitled "M. G. L. Chapter 151A, § 74"

**REFERENCE NO.:** UIPP 2015.04

**TO:** All DUA Managers, Career Center Field Operations Directors, Job Service Representatives, Compliance Officers, Review Examiners, Call Center Staff and Senior Staff Directors

**FROM:** Jennifer Lavin, Director, UI Policy & Performance

**SUBJECT:** Application of the "construed liberally" language in G. L. c. 151A, § 74.

**1. PURPOSE.**

To provide guidance on how to properly understand the statutory requirement that the Unemployment Insurance Law "shall be construed liberally in aid of its purpose, which purpose is to lighten the burden which now falls on the unemployed worker and his family," G. L. c. 151A, § 74, and to provide clarification on fact finding procedures for adjudication staff when resolving issues on disputed unemployment claims.

**2. REFERENCES.**

- G. L. c. 151A, § 74
- Revised Adjudicator's Handbook, Chapter One

**3. RESCISSIONS.**

All earlier policy statements and memoranda contradicting this memorandum are rescinded, including, but not necessarily limited to Memorandum dated June 16, 2010, from UI Policy & Performance, entitled "M. G. L. Chapter 151A, § 74."

#### 4. BACKGROUND.

The June 16, 2010 memorandum regarding G. L. c. 151A, § 74 misstates the Department's understanding of § 74 and other matters discussed in the memorandum. Although the Department has not followed the memorandum for some time and has not trained its personnel to follow it, the Department has concluded that it should be formally rescinded and replaced by the Department's actual understanding of § 74 and related matters.

#### 5. DISCUSSION.

G.L. c. 151A, §74 reads as follows: "This chapter shall be known and may be cited as the Unemployment Insurance Law, and shall be construed liberally in aid of its purpose, which purpose is to lighten the burden which now falls on the unemployed worker and his family." DUA's Legal Department has determined that Section 74 is a rule of statutory interpretation and should not be interpreted as a tool to be used in fact-finding.

Contrary to the 2010 § 74 memorandum, Section 74 does **not** require a JSR to find in favor of the claimant whenever the JSR is unable to resolve conflicts in the material facts. If the facts are equally balanced between the claimant and the employer, and the JSR is unable to arrive at a conclusion, the determination must follow the burden of persuasion: *against the claimant* in voluntary quit cases under § 25(e)(1); *for the claimant* in discharge cases under § 25(e)(2).

Chapter One of the revised Adjudicator's Handbook explains, among other things, that:

- The adjudicator's role as a fact-finder requires more than simply gathering statements and information. The adjudicator has to sort through the information to decide what is relevant and necessary to determining the issue at hand. The adjudicator must also decide whether each piece of information has been established by substantial and credible evidence, because if not, it is not a fact but merely an unsupported statement. When making determinations, it is important that adjudicators only consider facts that are supported by substantial and credible evidence.
- Substantial and credible evidence is supported by the material in the case file, and is the kind of evidence that reasonable people use to support their

conclusions. If the parties agree on a fact, it will be considered to be supported by substantial and credible evidence, unless the adjudicator has a valid and objective reason to not believe the parties. A statement by one party will be considered substantial and credible evidence for establishing a fact if the other party does not dispute the statement, unless the adjudicator has a valid and objective basis for finding the statement not credible.

- If a relevant fact is disputed by the parties, the adjudicator must look at all of the information in the case file and decide which party's assertion is more likely accurate.
- Once the facts have been established the adjudicator must decide through analysis whether the party with the burden of persuasion has met their burden and has shown by a preponderance of the evidence that the claimant is or is not entitled to benefits. The party with the burden of persuasion is responsible for persuading the adjudicator. The burden of persuasion depends on the issue; for discharges, the employer has the burden; for quits, the claimant has the burden.

Section 74 does **not** require a JSR to find for the claimant whenever the JSR finds both parties equally credible and the facts are of equal weight. Again, in such a case, the determination must follow the burden of persuasion.

## 6. ACTION.

When determining eligibility adjudicators should first consider the nature of the claimant's separation from employment: was the claimant fired (discharged) by the employer or did the claimant leave the job (quit)? If both parties agree about the reason for the separation the adjudicator does not need to determine who initiated the separation.

In discharge cases, the employer is the party most likely to have information about its reasons for firing the claimant, so the burden is on the employer to establish by substantial and credible evidence that the claimant is disqualified under G.L. c. 151A, §25(e)(2).

In quit cases, the claimant is the party most likely to have information about his or her reasons for leaving work, so the burden is on the claimant to

establish by substantial and credible evidence that the reason for leaving was not disqualifying under G.L. c. 151A, §25(e)(1).

In lay-off cases, the claimant will usually be approved for benefits without an issue being created.

If the parties disagree about the nature of the separation, *then the burden of persuasion is on the employer*. If the employer carries this burden and establishes that the claimant quit, then the burden shifts to the claimant to persuade the adjudicator that the reason for leaving work was not disqualifying. However, if the employer does not persuade the adjudicator that the claimant quit, the separation is to be considered a discharge and the employer has the burden of persuading the adjudicator that the claimant was discharged for disqualifying reasons.

7. **QUESTIONS.**

If you have any questions, please contact the UI Policy & Performance Department at (617) 626-6422.