

UNEMPLOYMENT INSURANCE APPEALS IN THE STATE OF WISCONSIN:

WHO FIGHTS AND WHO WINS?

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## INTRODUCTION

This paper contains an empirical analysis of disputes between employers and employees over eligibility for the receipt of unemployment insurance (UI) benefits. Unlike the system in some countries, in the United States the unemployment insurance system does not operate under no-fault principles. Since employees sometimes lose valuable benefits, and employers sometimes face higher taxes, both groups have incentives to appeal adverse decisions made by UI administrators. In this paper we study the incentives the parties have to appeal UI decisions and the factors that influence which party prevails.

Our goal in studying the UI appeals process is twofold. First, the extent to which the parties dispute UI administrative decisions has increased steadily over the last three decades. (See Vroman, 1995, for example.) The result is that the administrative costs of making UI system transfers have increased and become a substantial component of total costs. In the long run this must result in either higher taxes on employers or lower benefits for employees than would otherwise exist. It is important to understand the role of the UI system incentive structure if increased costs or decreased benefits are to be avoided.

Second, the UI appeals system offers a remarkable controlled environment in which to study the incentives to use valuable resources to further by advocacy the interests of the parties. Although the administrative process is financed independently of the financial interests of the parties, the parties themselves bear part of the advocacy costs. It follows that the parties may be expected to engage in advocacy to the extent that their benefits are greater than their costs. One way in which the parties may incur advocacy costs is measured by the extent to which the parties appeal administrative decisions. Of course, only part of these advocacy costs are borne by the parties. The other primary advocacy cost open to the parties is the use of attorneys to prepare and argue their cases. Because the UI tax system is incompletely experience rated, and because the benefits employees receive vary with their prior experience, the parties have

different incentives to engage in both types of advocacy. We use the natural variation within the UI system to test whether the parties respond to these incentives.

Our empirical analysis is based on detailed administrative records from a sample of the benefit determinations and appeals of these determinations in the state of Wisconsin. From these data we can determine who appeals administrative decisions, who engaged attorneys as advocates, and whether the use of attorneys increases the probability of prevailing in a judgment over the other party. The results of the analysis indicate that employers who face no additional tax cost from a layoff rarely appeal an administrative decision, which is consistent with the hypothesis that the incentives for disputation built into the UI system do influence dispute rates. The results also indicate that the use of lawyer advocates by workers tends to increase the probability that they prevail in an administrative hearing. However, we find no similarly favorable effect for employers when they use lawyers as advocates. This finding is inconsistent with the hypothesis that the use of lawyers results in wasteful "prisoners dilemma" incentives. However, the evidence does suggest that it may be useful to consider with care the incentives for disputation built into any reforms proposed for the UI system.

### INSTITUTIONAL FEATURES OF THE UI SYSTEM

This section of the paper contains a brief description of the structure of the UI system. The discussion is designed to highlight the nature of the incentives the UI system creates for the parties to a dispute.<sup>1</sup> The tax, benefit, and appeals systems are discussed in turn. Although each state administers its own UI system, the federal government sets broad guidelines within which the states must operate. The discussion provided here is largely representative of all state systems while the particular characteristics of the Wisconsin system will be highlighted.

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<sup>1</sup>See Blaustein, et al. (1993) for a complete description of the UI system.

The UI system is financed by a payroll tax levied on firms that is said to be imperfectly experience rated. A firm's tax rate generally depends upon its own layoff history so that firms that layoff an additional worker will be exposed to a higher tax burden. A maximum and minimum tax does exist, however, so that firms with very good or very bad layoff histories pay set amounts. For these firms, laying off an additional worker imposes no marginal cost.<sup>2</sup> In addition, taxes are only levied on workers' wages that fall below a set limit (the "taxable wage base") that varies by state, but is relatively low in almost all states. In Wisconsin, the taxable wage base was \$10,500 in 1994.

Certain eligibility rules and benefit levels also vary across states but share many common characteristics. Workers are said to be "monetarily eligible" for benefits if they have worked a certain number of weeks and earned a certain level of wages during their "base period" (defined as the first four of the last five calendar quarters prior to job loss). Benefits are typically determined as a function of base period wages and are payable until the worker returns to work or until a maximum duration of benefit receipt is reached. In Wisconsin, the maximum duration of benefits was 26 weeks for most claimants in 1994 and the maximum benefit increased from \$243 to \$266 from the beginning to the end of that year.

In addition to monetary eligibility, other eligibility conditions exist. For the purposes of this analysis, the most important of these conditions is that the unemployment spell be employer-initiated.<sup>3</sup> Workers who are unemployed because they were laid off or because their working conditions became unacceptable (i.e. the worker was "forced" to quit) are eligible to receive UI

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<sup>2</sup>A large literature exists arguing that this feature of the system provides an incentive for firms to layoff additional workers. Examples of this research include Bailey (1976), Feldstein (1978), Card and Levine (1994), and Anderson and Meyer (1994).

<sup>3</sup>Workers must also be able and available for work and must not have refused suitable work. In addition, some states have provisions that allow workers who quit their jobs to be eligible after satisfying a disqualification period. See Chasanov (1995) and Vroman (1995) for a further discussion of nonmonetary eligibility conditions.

benefits. Workers who are dismissed because they quit voluntarily or were incompetent in their jobs are typically not eligible. In most cases, determining whether a worker is eligible on this basis is straightforward. In a minority of cases, however, the circumstances surrounding a worker's separation from the firm is unclear and the state must make a decision regarding his/her eligibility for benefits. If the firm or worker is unhappy with this decision, an appeals process is available to either party involved in the dispute.<sup>4</sup>

The UI appeals process in most states, including Wisconsin, is hierarchical in nature.<sup>5</sup> A lower level appeal is heard before an administrative law judge (ALJ) and either party may appeal that ruling to a higher level. Federal law requires that 60% of lower level appeals be heard within 30 days after the appeal is filed and 80% within 45 days. Given these requirements, a format that can process a large number of cases quickly is clearly desirable. The standard, adversarial model of legal proceedings where appellants present and dispute evidence to a court that remains silent before rendering a verdict has been deemed inappropriate in this context.<sup>6</sup> In its place is a system where the proceedings are far more informal. The ALJ directs questions at each party designed to elucidate the information necessary for him/her to make a decision. Because knowledge of the law by the appellants in these hearings is not necessary, legal representation for either party involved in the dispute is far from universal. Some parties, however, do choose to retain legal counsel for these hearings.

## BACKGROUND AND LITERATURE REVIEW

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<sup>4</sup>Appeals can also be filed if the worker feels s/he has been unfairly denied benefits on the basis of monetary eligibility or other issues (such as refusal of suitable work). The two parties in these disputes is the worker and the state. For the purposes of this analysis we largely focus on disputes over separation issues because the two parties involved in these disputes are the worker and the firm.

<sup>5</sup>See Rubin (1980) for a detailed description of the UI appeals system.

<sup>6</sup>See Kritzer (1995) for a more detailed discussion of the format of these hearings.

The disputes we study in this paper result from an appeal by one party or another of a decision made by a third party administrator. Although there is a considerable literature addressing the cause of legal disputes, there has been little or no discussion of the appeals process. In effect, the opportunity to appeal reduces the extent to which a third party decision is binding. The result is that the variability possible in the outcomes the parties face if they cannot agree amongst themselves is increased. However, an appeal is made by a party only when that party encounters an adverse decision. Although this increases the uncertainty in the overall process, at the point of appeal it can only result in an increase in the likelihood of a favorable outcome for the party that appeals. Thus, the likelihood that either party appeals a decision should be determined by the extent to which the benefits of appeal outweigh the costs. As we shall see, there is enough natural variability in the benefits and costs to the parties that it is, in principle, possible to test this hypothesis.

Relatively little empirical research exists examining the specific features of the UI appeals system. Most research conducted to date either uses aggregate, state level data or micro data that presents cross-tabulations of program outcomes and do not control for potentially omitted factors. In the latter category, both Rubin (1995) and Kritzer (1995) show that legal representation is positively correlated with claimant success. These papers also found employer representation to be unrelated or negatively related to a firm's success in the appeals process. The negative relationship is typically attributed to the possibility that firms with weak cases are more likely to hire a lawyer. Using aggregated state-level data Vroman (1995) provides a thorough descriptive analysis regarding trends in appeals and claimant success rates, but does not formally model the decision to appeal or their outcomes. Chasanov and Cubanski (1995) model denial rates, appeal rates and appeal outcomes using aggregate state level data from 1979-90. They find that several state characteristics are correlated with outcomes. They proceed to conduct an examination of micro data on appeals cases from the States of Texas and Wisconsin. The set of control variables they employ, however, is considerably limited by data availability.

## EMPIRICAL SPECIFICATION

This section of the paper will set forth the statistical methodology employed to examine the decision to file an appeal and the outcome of the appeal proceedings. We model the decision to appeal as a function of each party's preference for litigation and their subjective assessment of the strength of their case. More formally, this decision may be modelled as:

$$\text{Prob}(A_k = 1) = f(\beta_0 + \beta_1 P_k + \beta_2 S_k) \quad (1)$$

where A represents an "appeal" indicator variable, P represents preferences, S represents strength of case, and k indexes firms and workers. Although preferences and strength of case are unobservable variables, we use available claimant and employer characteristics as proxies for these concepts. Probit specifications are used to estimate these models.

Modelling the outcome of the appeal process is more complicated because of the presence of unobservable characteristics that may bias parameter estimates. Here, the outcome of the appeal is defined as whether or not the initial ruling by the UI agency is reversed at the first level of the appeals procedure, where the case is heard by an administrative law judge. These outcomes may be modelled as a function of the strength of each party's case (S), whether each party is represented by legal counsel (R) and the judge's preferences (P), which may favor parties of a particular type (for instance, men over women or claimants over employers). More formally,

$$\text{Prob}(\text{REV}_{ij} = 1) = f(\beta_0 + \beta_1 P_{ij} + \beta_2 R_{ij} + \beta_3 S_i) \quad (2)$$

where REV indicates whether the initial ruling was reversed, i indexes cases, and j indexes ALJs. In this model, note that the strength of each party's case is an objective measure that may

differ from that modelled in equation (1), that indicates a subjective assessment on the part of each party.

This model can be broken down further by modelling the components of the ALJs decision. For instance, an ALJ's preferences may be idiosyncratic to an individual judge (i.e. consistently favoring claimants) or all judge's may favor claimants/firms with certain characteristics (i.e. men over women, small firms over big firms, etc.). This behavior may be modelled (in linear form for simplicity) as:

$$P_{ij} = \alpha_j + \alpha_1 X_i^1 + U_{ij} \quad (3)$$

where  $\alpha_j$  is an ALJ "fixed effect,"  $X_i^1$  represents a vector claimant/employer characteristics involved in case  $i$  and  $U_{ij}$  is a random error term. Appellants may be assumed to choose representation as a function of their own characteristics (the size of the potential benefit/cost of a reversal or access to legal counsel, for example) and the strength of their case:

$$R_i = \gamma_0 + \gamma_1 X_i^2 + \gamma_2 S_i + e_i \quad (4)$$

where  $X_i^2$  is a vector of claimant/employer characteristics that may overlap with  $X_i^1$ . Finally, the strength of a claimant's/worker's case may be modelled as a function of worker/firm characteristics,  $X_i^3$ , and an unobservable component  $\phi_i$ :

$$S_i = \delta_0 + \delta_1 X_i^3 + \phi_i \quad (5)$$

The problem with estimating the model specified in equation (2) directly is that strength of case is unobservable. Estimating this model omitting strength of case would likely introduce bias because the decision to obtain representation is a function of strength of case, as specified

in equation (4). If parties with a stronger (weaker) case are more likely to hire legal counsel, then estimates of the benefit of obtaining representation would be upward (downward) biased.

Empirically, there are two potential solutions to this problem. First, we can directly enter proxy variables representing characteristics of the parties that may control for strength of case ( $X_i^3$  in equation 5). This solution is sufficient as long as the residual components of strength of case ( $\phi_i$  in equation 5) are unrelated to other included variables. Second, we can use an instrumental variables procedure (where the instruments are represented by  $X_i^2$  in equation 4) to provide predicted probabilities of obtaining representation that is uncorrelated with strength of case. This model is identified if there are variables that are correlated with the decision to hire legal counsel but uncorrelated with the outcome of the case (i.e. elements of  $X_i^2$  that are not elements of  $X_i^1$  or  $X_i^3$ ).

Parameter estimates from equation (2) can be used to test the Prisoner's Dilemma Hypothesis regarding the hiring of legal counsel. In the present context, define the elements of the  $\beta_2$  vector in equation 2 to be  $\beta_2^c$  and  $\beta_2^f$ , the effect of legal representation on the probability of reversal for the claimant and firm, respectively. A prisoner's dilemma is empirically supported if  $\beta_2^c = -\beta_2^f$ .

## DESCRIPTION OF THE DATA

The data employed in this project represents administrative data from the UI system in the State of Wisconsin. We have obtained data on all claims resulting in an appeal arising from nonmonetary issues (12,728) and a 20% sample of all initial claims filed (41,771) in 1994 by workers eligible to receive benefits. One significant shortcoming of these data is that we have no information on claims that were denied but not appealed by the worker because of the difficulty in obtaining some of the data for these workers.<sup>7</sup> As a result, we are unable to

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<sup>7</sup>Another shortcoming of these data is that it omits all "additional claims" filed that do not lead to an appeal. When a worker files a valid new claim, a benefit year begins that defines the

estimate models of the worker's decision to appeal a denied claim in this analysis. Only the employer's decision to appeal an awarded claim will be estimated here. This shortcoming does not affect the analysis of the outcome of an appeal because all information for workers who appeal a denied claim is available.

Records for individual claimants from three separate databases (benefits, taxes, and appeals) were merged, providing a significant amount of information related to an individual claim. From the benefits database, some characteristics of the claimant can be identified, including demographic characteristics (age, race, and gender), base period wages, weekly benefit amount, and the maximum duration of benefits. In addition, the benefits database contains some information regarding the claimant's base period employer, including the size of the firm and its payroll along with its industry (SIC code). From the tax database, the firm's tax rate can be identified. Applying the appropriate tax schedule for 1994, we can determine whether the firm is at the minimum or maximum tax rate and whether the firm is "standard rated."<sup>8</sup> Finally, the appeals database provides information regarding cases that were appealed including the reason for the appeal, whether each party to the appeal obtained legal representation, and the outcome of the hearing. There were 12,728 lower level appeals based on nonmonetary issues in 1994 in Wisconsin; 8,290 were based upon the circumstances surrounding the separation of the worker from the firm.

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worker's eligibility for benefits throughout the following year. An additional claim is another claim filed within the same benefit year. In 1994 in Wisconsin, 418,122 total claims were filed of which 215,201 were new claims and 202,921 were additional claims. To the extent that workers filing additional claims are different in some ways than workers filing new claims, the results of the analysis regarding the decision to appeal may be biased. For the purposes of this analysis, we are forced to assume that this decision is uncorrelated with whether or not the claim was an initial or additional claim.

<sup>8</sup>New firms that have no layoff history are charged a fixed tax rate for three years at which point taxes are applied according to the firm's layoff history. These firms are said to be standard rated.

Descriptive statistics for the sample are reported in Tables 1-4. Data on all awarded claims overall and distinguished by whether or not the awarded claim was appealed by an employer are reported in Table 1. Average characteristics of firms and workers for all awarded claims (column 1) are weighted by the probability of being in the sample.<sup>9</sup> Among claimants that are awarded benefits, the average age is about 38, less than half are women and the vast majority are white, reflecting general workforce characteristics in the state. Workers earned about \$18,500 during their base period and were eligible for \$197 per week in benefits for just over 24 weeks, on average. Among the firms at which these workers were employed, a significant number, 13.6%, were employed at firms paying the maximum tax rate while a very small number worked at firms paying the minimum or standard tax rate. These firms employed just under 600 workers on average and had payrolls that averaged \$16 million. Only a little over half of all wages were taxable at these firms, reflecting the fact that the taxable wage base (\$10,500) is well-below the annual wage of the average worker. Overall, about 1% of all awarded claims are appealed by an employer.

Differences between firms and workers in cases appealed by an employer can be observed from columns 2 and 3 in Table 1. Among firm characteristics, of significant interest is the huge differential in the fraction of firms at the maximum tax rate between employers that appeal and those that do not. Only 2.7% of firms that appeal are paying the maximum tax rate compared to 13.7% of firms that do not. On the other hand, firms that appeal are much more likely to be standard rated compared to firms that do not (4.9% versus 1.5%). Firms that appeal tend to be somewhat larger in number of employees, but pay less compared to firms that do not. Consistent with these findings, the average worker awarded benefits whose employer has

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<sup>9</sup>Initial claims that were not appealed were sampled at a 1 in 5 rate and all appeals were sampled. In addition, appeals may be filed on the basis of an initial claim as well as an additional claim. Therefore, the appropriate sample weights for unappealed claims is  $5 \cdot (418,222/215,201) = 9.72$ .

appealed the decision tends to be lower paid and is eligible for lower benefits for a shorter duration of time compared to workers whose employers do not appeal a benefit award.

Table 2 reports average firm and worker characteristics among all cases appealed on the basis of a separation issue separately by the party filing the appeal. Significant differences between the two groups are apparent. Workers who appeal had higher earnings prior to displacement compared to workers whose employer appealed, although the demographic characteristics between the two groups are similar. This result is consistent with differences in total payrolls between the two types of firms that had similar numbers of employees. It is also apparent that party who initiates an appeal is roughly twice as likely to obtain legal counsel compared to their opponent. Another interesting finding in this table is that attendance of the parties at an appeals hearing is far from universal, particularly by the party that did not file the appeal. Even among the appellant that initiated the appeal, only 80-85% appear at their own hearing.

Table 3 presents characteristics of appellants broken down by their legal representation status. Regardless of who filed the appeal, it appears that workers and firms will greater access to legal counsel take advantage of this resource. Claimants who earn more and can more easily afford the expense (but also have more at stake in the appeal through higher benefits) and larger firms with bigger payrolls, that are more likely to have their own legal staff or legal services provided on retainer, obtain representation in these hearings regardless of the party that filed the appeal. In addition, older workers and women are more likely to appeal. Interestingly, differences in the fraction of firms at the maximum tax rate are only evident in claimant-initiated appeals. An explanation for this finding may be the fact that firms at the maximum tax rate appear to be so unlikely to file an appeal in the first place that the decision to obtain legal counsel may be somewhat moot.

Characteristics of "winners" and "losers" in appeals proceedings are presented in Table 4 where cases are differentiated by the party filing the appeal. Columns 1 and 2 report means

for claimant-initiated appeals. As might be expected, claimants that failed to appear at a hearing that they precipitated were very unlikely to win the case (although a few did). Similarly, a firm's failure to appear at the hearing (either directly or through legal counsel) is positively correlated with a reversal among claimant-initiated appeals. Among cases in which the claimant "won" (i.e. decision reversed), more than twice as many claimants had obtained legal counsel relative to claimants that "lost" (i.e. decision not reversed). Winning claimants are also more likely to be higher paid and, therefore, eligible for higher benefits. Firms that were successful in preventing the claimant from receiving benefits tended to be larger (in number and payroll), but their tax status and degree of legal representation were roughly comparable.

Similar findings are observed regarding employer-initiated appeals, reported in columns 3 and 4. Workers and firms that appeared at the hearing were considerably more likely to win their case. ALJ's were more likely to rule in favor of workers who earn higher wages and are eligible for higher benefits. Appeals were less likely to be reversed when the claimant was white or female. Bigger firms with a higher payroll were more likely to have a decision reversed. The major difference in the context of employer-initiated appeals is that firms that obtain legal counsel have a greater probability of reversal.

## RESULTS

Before presenting the results of estimating equations (1) and (2), we first report estimates of a prisoner's dilemma payoff matrix for the claimant's and firm's decision to hire legal counsel or not. The results of this analysis are reported in Table 5A and 5B for claimant-initiated and employer-initiated appeals, respectively. With claimant-initiated appeals, the estimating effect of obtaining representation is quite strong for claimants, regardless of the firm's representation status. For claimants fighting against firms that have hired counsel, obtaining representation for themselves increases the probability of a reversal (winning) from 33% to 57%. A similar increase is observed for claimants facing unrepresented firms. Employers, on the other hand,

apparently receive no advantage by obtaining representation regardless of the representation status of workers.

Similar findings are observed for employer-initiated appeals. The probability that an ALJ rules in favor of the claimant (i.e. not reversed) rises in the presence of legal counsel from 21% to 28% and 20% to 35% compared to firms that are not represented and firms that are represented, respectively. Findings regarding the advantage of hiring legal representation for firms are inconsistent, depending upon the representation status of claimants. Of course, one shortcoming of this analysis is that it neglects to hold constant other characteristics of firms and workers that may be related to both the decision to hire a lawyer and the outcome of the case.

The estimated effects of claimant and firm characteristics on the decision of an employer to appeal a UI award (equation 1) are reported in Table 6. Three different specifications are estimated that vary according to whether claimant characteristics and industry-specific fixed effects are included as regressors. The main finding in this table is that firms at the maximum tax rate are very unlikely to appeal an awarded claim, even after controlling for other firm and worker characteristics including industry fixed effects. In column 3, which reports results controlling for all of these factors, firms at the maximum tax rate are estimated to be over half a percent less likely to appeal an awarded claim. Since just under one-percent of awarded claims are appealed by employers, this represent over a 50% reduction in the likelihood of an employer-initiated appeal. On the other hand, standard-rated firms are about two-thirds of a percent more likely to file an appeal, indicating they are roughly two-thirds more likely to appeal compared to the average firm. This finding may be explained by new firms who have not yet started paying taxes based on their own experience trying to establish lower tax rates when they become experience-rated.

Other firm and worker characteristics appear to influence the firm's decision to appeal as well. Larger firms apparently are more likely to appeal (although this finding is only statistically significant at the 10% level in models that control for worker characteristics and

industry fixed effects), perhaps because they have more resources to devote to such an activity. Firms with a larger fraction of taxable payroll are also more likely to appeal. Holding constant firm size and total payroll, this variable is identified from firms that vary according to their turnover within the year (higher turnover firms have a higher percentage of taxable wages). High turnover firms may be trying to avoid the increase in tax rates that are imposed by experience rating. Firms are also less likely to appeal when the claimant is older, female, and white. Those firms employing workers eligible for a longer duration of benefits also appear to be less likely to appeal. Since the cost of paying a claim is inversely related to the maximum duration of benefits, this finding is counterintuitive and may represent unobservable characteristics of firms that are correlated with employing workers eligible for payments of longer duration.<sup>10</sup>

Among firms/workers that decide to appeal, parameter estimates of a model of the decision to obtain legal representation, modelled in equation 4 above, are reported in Table 7. These models represent first stage regressions in the subsequently reported two-stage least squares models of appeal outcomes. Among claimants, those eligible for greater benefits with larger earnings are more likely to hire legal counsel regardless of the party filing the appeal. These findings make sense since higher weekly benefits increase the stakes in fighting an appeal and those with higher incomes may have sufficient resources to retain counsel. In addition older workers and women appear more likely to hire a lawyer.

Among firms, bigger firms are more likely to use the services of a legal representative, perhaps because they have lawyers on staff or on a retainer. Firms with larger payrolls are less likely to obtain legal counsel. After controlling for firm size, the effect of differences in total payroll is identified by the average worker's wage. Therefore, high wage firms are less likely

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<sup>10</sup>Of course, the presence of unobservable characteristics may be influencing the remainder of the findings in this analysis as well. Unfortunately, no instrumental variables that could be used to control for unobservables is obvious or readily available in this part of the analysis.

to use legal services. The percent of payroll that is taxable is negatively associated with hiring a lawyer. Similar to the earlier discussion regarding this variable, this finding may be interpreted as indicating that high turnover firms are less likely to use legal services. We also find that firms paying the maximum tax rate are significantly less likely to use a lawyer in cases that are initiated by a claimant. Again, this finding is consistent with the notion that the marginal cost of the claimant receiving benefits is zero for these firms. No such finding is observed in employer-initiated appeals, perhaps because so few maximum tax rate firms bother to appeal a benefit award in the first place.

Table 8 presents the results of several alternative specifications of models of the appeal outcome, represented in equation 2 above, where the appeal was initiated by the claimant. Two sets of models are estimated. In the first set, OLS estimates are provided where alternative firm and worker characteristics are entered directly and their coefficients may be interpreted in this context as indicating the preferences of ALJ's or as potential proxies for strength of case. In addition, an indicator variable representing whether or not each party appeared at the hearing is always included as a proxy measure for strength of case. The effect of legal representation is consistent across all of these specifications; claimants that hire lawyers are 15-17% more likely to win their appeal relative to claimants without lawyers. Employer representation is not shown to significantly alter the outcome of the proceedings in any specification. As suggested above, whether or not either party appears at the hearing has a very large effect on the outcome. The party that fails to show up is 25 to 45% less likely to win. The only difference in worker or firm characteristics that is consistently and significantly associated with the outcome of an appeal hearing is the weekly benefit amount. Claimants eligible for higher benefits are more likely to successfully have a denied claim reversed.

Two additional specifications are reported in Columns 5 and 6 of Table 8 that employ two-stage least squares estimates of the effect of legal representation. These models provide an alternative mechanism for correcting the potential bias that may be present if legal representation

is correlated with strength of case. The two specifications differ by the exclusion restrictions employed to identify the model: the first excludes all worker and firm characteristics from the second stage regression and the second excludes UI system parameters (i.e. benefit and tax measures) only. The latter specification allows ALJ preferences over some worker/firm characteristics to influence an appeal's outcome. Results from this analysis are quite comparable to those obtained from OLS. Claimants appear to benefit dramatically by utilizing legal counsel, but employers appear to gain little.

Table 9 provides an analogous exercise for appeals filed by employers. In the OLS models, neither claimant nor employer representation significantly affects outcomes. In two stage least squares (TSLS) models, however, claimant representation is shown to reduce the odds of the ALJ ruling in favor of the firm by about 15%, an effect comparable to that observed in cases where the claimant filed the appeal. Employer representation is not found to significantly affect outcomes.<sup>11</sup> Again, regardless of specification, showing up at the hearing is strongly related to the probability of winning the case.

## CONCLUSION

This paper has explored the determinants of appealing an awarded claim and the outcome of appeals hearings in the Unemployment Insurance system using administrative data from the State of Wisconsin. We find evidence indicating that firms paying the maximum UI tax rate are substantially less likely to file an appeal regarding an awarded claim. These firms are also unlikely to obtain legal representation in appeals cases that are initiated by claimants. In addition, legal representation seems to enhance a claimant's probability of winning an appeals

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<sup>11</sup>Although estimates from Column 6 show a large and negative effect of employer representation, this estimate is quite imprecisely estimated. Identification in this model is obtained from the relationship between an employer's tax status and the decision to obtain representation. The imprecision is related to the first stage parameter estimates that show no significant relationship between tax status and representation.

case, but has no significant effect on the chances that a firm will win its case. Claimants who hire lawyers are roughly 15% more likely to win relative to claimants who appear at hearings unrepresented.

Results regarding the impact of a firm's tax status are consistent with other research examining the effects of imperfect experience rating on temporary layoffs. In that research, employers that face a zero marginal tax cost if they layoff a worker are predicted to layoff more workers; a proposition which is largely supported by the empirical evidence. If firms are responsive to tax incentives in the context of layoffs, it seems they should similarly be responsive to the different cost implications regarding filing an appeal and hiring a lawyer. The results presented here suggest that they do respond in the predicted manner.

These findings also provide some implications for public policy regarding the role of representation in the UI appeals process. To the extent that claimants go unrepresented in an appeals hearing because they lack the resources to obtain legal counsel, they appear to be placed at a significant disadvantage regarding the outcome. Unrepresented employers do not appear to face similar obstacles. Our results provide some support for proposals to provide low cost legal alternatives to claimants.<sup>12</sup>

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<sup>12</sup>See Morris (1980) and Emsellem (1995) for examples of this sort of proposal.

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Table 1: Characteristics of Claimants Awarded Benefits and their Base Period Firms

	All Claimants Awarded Benefits <sup>1</sup>	Awarded Claims Uncontested by Employer	Employer-Appealed Awarded Claims
<b>Claimant Characteristics</b>			
% Appealed by Employers	0.95%		
Weekly Benefit Amount	197.4	197.7	171.0
Maximum Duration of Benefits	24.1	24.1	22.1
Base Period Wages	18,497	18,538	14,178
Age	37.8	37.8	34.3
% Female	37.1	37.1	38.3
% White	92.5	92.6	82.3
<b>Employer Characteristics</b>			
% at Minimum Tax Rate	0.5	0.5	1.2
% at Maximum Tax Rate	13.6	13.7	2.7
Standard Rated Firm	1.5	1.5	4.9
Firm size	583	583	642
Total Payroll (in \$100,000)	166.2	166.6	133.8
Percent of Payroll that is Taxable	54.2	54.1	64.6
Sample Size <sup>2</sup>	45,659	41,771	3,888

Notes:

<sup>1</sup>All statistics are weighted by the probability of being in the sample.

<sup>2</sup>Some variables have fewer observations due to missing data.

Table 2: Characteristics of Appellants in Separation Cases

	Claimant-Initiated Appeal	Employer-Initiated Appeal
<b>Claimant Characteristics</b>		
% Represented by Counsel	9.2	5.9
% Appeared at Hearing	79.7	71.0
Weekly Benefit Amount	183.2	164.3
Maximum Duration of Benefits	24.3	23.9
Base Period Wages	16,071	13,437
Age	36.0	32.9
% Female	38.1	38.8
% White	80.3	79.3
<b>Employer Characteristics</b>		
Represented by Counsel	8.2	15.7
% Appeared at Hearing	73.8	86.9
% at Minimum Tax Rate	0.6	1.0
% at Maximum Tax Rate	1.6	0.6
Standard Rated Firm	3.9	4.5
Firmsize	716.5	716.3
Total Payroll (in \$100,000)	183.8	139.1
Percent of Payroll that is Taxable	60.1	64.9
Sample Size*	5,756	2,534
<b>Notes:</b>		
*Some variables have fewer observations due to missing data.		

Table 3: Characteristics of Appellants by Representation Status

Appellant:	Claimant-Initiated Appeal		Employer-Initiated Appeal	
Representation:	Yes	No	Yes	No
<b>Claimant Characteristics</b>				
Weekly Benefit Amount	204.3	181.0	195.7	162.3
Maximum Duration of Benefits	24.9	24.2	25.0	23.8
Base Period Wages	19,677	15,705	18,887	13,094
Age	38.4	35.7	36.3	32.7
% Female	49.2	37.0	50.0	38.1
% White	83.5	80.0	88.9	78.7
Sample Size	530	5,226	150	2,384
<b>Employer Characteristics</b>				
% at Minimum Tax Rate	0.8	0.6	0.5	1.1
% at Maximum Tax Rate	0.2	1.7	0.5	0.6
Standard Rated Firm	2.1	4.1	4.3	4.5
Firm size	1,256	668.1	1,001	663.4
Total Payroll (in \$100,000)	314.9	172.0	178.4	131.9
Percent of Payroll that is Taxable	56.7	60.4	62.6	65.3
Sample Size*	473	5,283	397	2,137

Notes:

\*Some variables have fewer observations due to missing data.

Table 4: Characteristics of Appellants by Outcome of Appeal

Appellant:	Claimant-Initiated Appeal		Employer-Initiated Appeal	
Decision:	Not Reversed	Reversed	Not Reversed	Reversed
<b>Claimant Characteristics</b>				
% Represented by Counsel	6.3	14.2	6.5	4.3
% Appeared at Hearing	68.2	99.3	78.9	50.6
Weekly Benefit Amount	176.8	194.0	169.6	150.9
Maximum Duration of Benefits	24.1	24.7	24.0	23.6
Base Period Wages	15,194	17,569	14,164	11,586
Age	35.5	36.8	33.6	31.3
% Female	37.8	38.7	41.1	32.9
% White	78.3	83.7	81.2	74.4
<b>Employer Characteristics</b>				
Represented by Counsel	7.9	8.8	14.5	18.6
% Appeared at Hearing	81.6	60.5	81.9	99.4
% at Minimum Tax Rate	0.7	0.6	1.2	0.6
% at Maximum Tax Rate	1.7	1.5	0.5	0.7
Standard Rated Firm	3.7	4.2	5.3	2.4
Firm size	752.7	654.5	685.5	794.8
Total Payroll (in \$100,000)	191.3	171.1	136.3	146.5
Percent of Payroll that is Taxable	60.8	58.9	64.9	64.8
Sample Size*	3,632	2,124	1,819	715
<b>Notes:</b>				
*Some variables have fewer observations due to missing data.				

**Table 5A: Probability of Reversal in Claimant-Initiated Appeals  
by Representation Status  
(number of observations in parentheses)**

		Claimant	
		Not Represented	Represented
Employer	Not Represented	35.0 (4,882)	56.9 (401)
	Represented	32.8 (344)	56.7 (129)

**Table 5B: Probability of Reversal in Employer-Initiated Appeals  
by Representation Status  
(number of observations in parentheses)**

		Claimant	
		Not Represented	Represented
Employer	Not Represented	27.5 (2,033)	21.2 (104)
	Represented	35.3 (351)	19.6 (46)

Table 6: Effect of Claimant and Employer Characteristics on the Probability of an Employer-Appealed Claim<sup>1</sup>  
(Standard Errors in Parentheses)

	(1)	(2)	(3)
<b>Employer Characteristics</b>			
Firmsize (x 1,000)	0.174 (0.056)	0.138 (0.053)	0.090 (0.052)
Total Payroll (x 1,000,000)	-0.006 (0.002)	-0.005 (0.002)	-0.003 (0.002)
Percent of Payroll that is Taxable	1.628 (0.199)	1.175 (0.213)	0.717 (0.211)
Minimum Tax Rate	0.431 (0.471)	0.554 (0.466)	0.450 (0.420)
Maximum Tax Rate	-0.772 (0.128)	-0.670 (0.121)	-0.530 (0.124)
Standard-Rated Firm	0.610 (0.284)	0.601 (0.268)	0.701 (0.265)
Industry Fixed Effects	No	No	Yes
<b>Claimant Characteristics</b>			
Age (x 10)		-0.135 (0.034)	-0.137 (0.032)
Female		-0.113 (0.078)	-0.221 (0.074)
White		-0.782 (0.145)	-0.606 (0.133)
Weekly Benefit Amount (x 100)		-0.022 (0.092)	0.076 (0.086)
Maximum Duration of Benefits (x 10)		-0.295 (0.064)	-0.272 (0.059)
Base Period Wages (x 10,000)		-0.015 (0.059)	-0.045 (0.056)

Notes:

<sup>1</sup>All derivatives multiplied by 100 (in addition to multiplications noted in table) to reflect changes in probabilities.

Table 7: Effect of Claimant and Employer Characteristics on the Probability of Obtaining Legal Representation in an Appeals Case (Standard Errors in Parentheses)

	Claimant-Initiated Appeal		Employer-Initiated Appeal	
<b>Claimant Characteristics</b>				
Age (x 10)	0.013 (0.004)		0.009 (0.004)	
Female	0.052 (0.008)		0.038 (0.009)	
White	0.001 (0.010)		0.023 (0.011)	
Weekly Benefit Amount (x 100)	0.042 (0.008)		0.025 (0.010)	
Maximum Duration of Benefits (x 10)	0.006 (0.013)		0.019 (0.015)	
Base Period Wages (x 100,000)	0.066 (0.043)		0.112 (0.057)	
<b>Employer Characteristics</b>				
Firmsize (x 1,000)		0.024 (0.005)		0.033 (0.008)
Total Payroll (x 1,000,000)		-0.056 (0.017)		-0.112 (0.041)
Percent of Payroll that is Taxable		-0.062 (0.019)		-0.119 (0.041)
Minimum Tax Rate		0.053 (0.050)		-0.061 (0.074)
Maximum Tax Rate		-0.070 (0.030)		-0.011 (0.096)
Standard-Rated Firm		-0.018 (0.022)		0.031 (0.041)

Table 8: Effect of Appellant Characteristics on  
Probability of Reversal: Claimant-Initiated Appeal  
(Standard Errors in Parentheses)

	OLS (1)	OLS (2)	OLS (3)	OLS (4)	TSLS <sup>1</sup> (5)	TSLS <sup>1</sup> (6)
Claimant Represented	0.167 (0.023)	0.163 (0.023)	0.156 (0.023)	0.151 (0.024)	0.092 (0.024)	0.170 (0.035)
Employer Represented	0.021 (0.023)	0.025 (0.024)	0.021 (0.024)	0.010 (0.024)	-0.006 (0.034)	0.080 (0.057)
Claimant Appeared at Hearing	0.440 (0.022)	0.440 (0.022)	0.437 (0.022)	0.419 (0.023)	0.441 (0.022)	0.440 (0.022)
Employer Appeared at Hearing	-0.258 (0.015)	-0.256 (0.016)	-0.256 (0.016)	-0.282 (0.016)	-0.245 (0.015)	-0.246 (0.015)
<b>Claimant Characteristics</b>						
Age (x 10)		0.002 (0.007)	-0.001 (0.007)	-0.001 (0.007)		-0.015 (0.008)
Female		-0.024 (0.013)	-0.016 (0.014)	-0.028 (0.014)		-0.060 (0.016)
White		0.022 (0.017)	0.010 (0.017)	0.041 (0.019)		0.009 (0.017)
Weekly Benefit Amount (x 100)			0.051 (0.016)	0.046 (0.016)		
Maximum Duration of Benefits (x 10)			0.038 (0.023)	0.043 (0.023)		
Base Period Wages (x 10,000)			-0.066 (0.094)	-0.098 (0.096)		
<b>Employer Characteristics</b>						
Firmsize (x 1,000)		-0.006 (0.010)	-0.004 (0.010)	-0.001 (0.010)		-0.017 (0.014)
Total Payroll (x 1,000,000)		-0.0002 (0.004)	-0.0002 (0.004)	-0.001 (0.004)		0.0001 (0.004)
Percent of Payroll that is Taxable		-0.075 (0.033)	-0.037 (0.037)	-0.053 (0.041)		0.001 (0.043)
Minimum Tax Rate			-0.031 (0.082)	-0.043 (0.081)		
Maximum Tax Rate			-0.076 (0.049)	-0.012 (0.054)		

Standard-Rated Firm			0.046 (0.038)	0.063 (0.039)		
Fixed Effects						
Industry				x		
Hearing Office				x		
Admin. Law Judge				x		
<u>Notes</u>						
<p><sup>1</sup>First stage regressions for the decision to obtain legal representation are reported in Table 7, columns 1 and 2. Standard errors have not been corrected for the fact that the values of employer and claimant representation are predicted values.</p>						

Table 9: Effect of Appellant Characteristics on  
Probability of Reversal: Employer-Initiated Appeal  
(Standard Errors in Parentheses)

	OLS (1)	OLS (2)	OLS (3)	OLS (4)	TOLS <sup>1</sup> (5)	TOLS <sup>1</sup> (6)
Claimant Represented	-0.016 (0.037)	0.008 (0.038)	0.025 (0.039)	0.066 (0.041)	-0.153 (0.025)	-0.156 (0.036)
Employer Represented	0.036 (0.023)	0.038 (0.024)	0.040 (0.024)	0.029 (0.031)	0.056 (0.060)	-0.260 (0.228)
Claimant Appeared at Hearing	-0.307 (0.021)	-0.290 (0.021)	-0.272 (0.022)	-0.296 (0.022)	-0.272 (0.021)	-0.273 (0.021)
Employer Appeared at Hearing	0.310 (0.031)	0.307 (0.031)	0.304 (0.031)	0.293 (0.031)	0.307 (0.031)	0.306 (0.031)
<b>Claimant Characteristics</b>						
Age		-0.003 (0.001)	-0.002 (0.001)	-0.002 (0.001)		-0.0003 (0.001)
Female		-0.059 (0.018)	-0.074 (0.018)	-0.061 (0.019)		-0.018 (0.021)
White		-0.033 (0.022)	-0.017 (0.022)	-0.022 (0.025)		0.018 (0.025)
Weekly Benefit Amount (x 100)			-0.037 (0.025)	-0.044 (0.025)		
Maximum Duration of Benefits			-0.001 (0.003)	-0.003 (0.003)		
Base Period Wages (x 10,000)			-0.025 (0.019)	-0.017 (0.020)		
<b>Employer Characteristics</b>						
Firmsize (x 1,000)		0.007 (0.011)	-0.001 (0.011)	-0.001 (0.011)		0.040 (0.033)
Total Payroll (x 1,000,000)		-0.0003 (0.001)	0.0001 (0.001)	0.0001 (0.001)		-0.001 (0.001)
Percent of Payroll that is Taxable		0.004 (0.046)	-0.027 (0.051)	0.016 (0.057)		-0.195 (0.119)
Minimum Tax Rate			-0.089 (0.085)	-0.087 (0.084)		
Maximum Tax Rate			0.085 (0.122)	0.181 (0.143)		

Standard-Rated Firm			-0.127 (0.043)	-0.118 (0.043)		
<b>Fixed Effects</b>						
Industry				x		
Hearing Office				x		
Admin. Law Judge				x		
<b>Notes:</b>						
<p><sup>1</sup>First stage regressions for the decision to obtain legal representation are reported in Table 7, columns 3 and 4. Standard errors have not been corrected for the fact that the values of employer and claimant representation are predicted values.</p>						



## **UNDERSTANDING DENIALS AND APPEALS IN THE UNITED STATES**

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There are a number of nonmonetary eligibility requirements that are applied when deciding whether an individual claimant will be awarded UI benefits. In general, these require that the individual demonstrate an ability and willingness to seek and accept suitable employment, and that there are no disqualifications related to the individual's most recent job separation. States *disqualify* individuals from receiving benefits for a number of reasons, including the following: voluntary separation from work without "good cause;" discharge from employment due to misconduct connected with the job; refusal of suitable employment without "good cause;" unemployment as a result of a labor dispute; or fraudulent misrepresentation to obtain or increase UI benefits. These restrictions are designed to limit payment to only those workers who are unemployed primarily as a result of economic causes.<sup>4</sup> Because almost all eligibility requirements for receiving Unemployment Insurance are determined by the states, the definitions vary significantly across states.

The actual impact of these requirements on claimants is determined most directly by the extent to which nonmonetary eligibility violations in specific cases are actually discovered. Just as there is significant variation across states in the definitions of nonmonetary eligibility that are applied in determining eligibility, there is also variation across states in the processes that are used to *detect* determination issues (i.e., the initial decisions to pursue additional information on a separation issue or a claimant's continuing availability for work). Consequently, the process of identifying and evaluating individual cases is an important step which ultimately determines the extent to which benefits are denied on the basis of nonmonetary eligibility provisions. While a complete description of the methods used in each state to detect and decide separation and nonseparation issues is not available, some general information is known. The process varies depending on whether the issue involves the initial separation from employment or a claimant's ongoing eligibility for UI benefits (i.e., a nonseparation issue). Each of these processes are described below.

### **Determination Process for Separation Issues**

The number of determinations for *separation* issues (i.e., issues related to an individual's separation from employment, such as voluntary separation from work without "good cause" and misconduct) depends primarily on the claimant intake process and information obtained from employers.

The nature of the intake procedures that are followed may have a direct effect on the number of determinations. Variations in the intake procedures that could have such an effect include the following: when information on nonmonetary eligibility requirements is provided to claimants (either before or after the intake process); whether the filing of additional forms is required at intake if a separation issue arises; and how questions are posed to claimants (e.g., whether a request is made for a claimant's submission of fact or a claimant's judgement call on the matter of whether the separation action was with "good cause").<sup>5</sup>

The procedures in place to solicit employer information may significantly affect both the level and the type of employer participation. Variations in the processes for obtaining employer information include the following: when and how information is gathered from employers (e.g., whether a form is sent out automatically with every application for UI benefits or whether all responsibility for contesting a claim originates with the employer); how the questions are posed to employers; and what types of follow-up measures are taken to ensure a response. In addition, the decision of individual employers to protest the eligibility of UI claims dictates the extent to which they participate in the UI system's eligibility determination process.

### **Determination Process for Nonseparation Issues**

The number of determinations for *nonseparation* issues (i.e., issues related to an individual's ongoing eligibility, such as ability to work, availability for work, and earning disqualifying income) depends largely on four types of information: the intake form; ongoing claims forms, which include information on the claimant's job search; Eligibility Review Process (ERP) interviews, which focus on detecting potential eligibility issues surrounding the claimant's job search efforts and availability for work; and the claimant's responses to referrals and job offers generated by the Employment Service. States vary in how frequently ongoing claims forms are required to be submitted, as well as in their interpretation and review of the information submitted on the forms. For example, states that randomly audit some portion of employer contacts required to prove job search activity or that review the ongoing claims forms in detail are more likely to detect an issue than states that lack review procedures or that enforce them poorly. Similarly, states vary in their responses to ERP interviews and office appointments. In some states, missing one appointment with UI staff is considered to be evidence of

unavailability for work, whereas other states are concerned only with repeated broken appointments, and still other states never consider this to be a reason to initiate a determination.

## **OVERVIEW OF THE DENIAL PROCESS**

After a determination issue has been identified, a fact-finding process is undertaken to gather information from both claimants and employers. The state's laws and regulations are then applied to those facts, and a decision is made whether or not to award UI benefits to a claimant. Research indicates that the number of times a state denies benefits to UI claimants (on the basis of nonmonetary ineligibility) is more dependent on the *number* of determinations than on the percentage of determinations that lead to denials (Corson *et al.* 1986). Stated somewhat differently, there is significantly more variation across states in determinations per initial claim than in the ratio of denials to determinations.

Corson *et al.* (1986) identified the following three factors which also influence the denial rate: the extent to which all fact-finding is part of a recognized determination process; the extent to which states use in-person interviews; and the extent to which a single staff person conducts both fact-finding and adjudication.

## **OVERVIEW OF THE APPEAL PROCESS**

In cases in which the determination process results in a denial of UI benefits, the Social Security Act requires that each state provide an "opportunity for a fair hearing before an impartial tribunal" (Section 303(a)(3)). Every state also allows employers to appeal UI benefit awards to claimants.<sup>6</sup> As a result of the 1971 U.S. Supreme Court decision in *California Department of Human Resources v. Java* (402 U.S. 121, 91 S.Ct. 1347, 28 L.Ed.2d 666), claimants who have been found eligible for benefits are allowed to continue receiving benefits unless and until a decision is made that reverses that determination. Thus, the act of filing an appeal by an employer does not stop payment of benefits.

All states allow a claimant or employer at least one administrative appeal, usually called a lower authority or lower level appeal. The amount of time the claimant or employer has to file this appeal varies by state, ranging from 7 to 30 calendar days after a benefit determination has been made.<sup>7</sup> In over one-half of the states, a single hearing officer, generally referred to as a referee or examiner, decides the appeal at this stage. In the remaining states, a panel

comprised of a referee and two associates may also be used to decide the lower authority appeal. The referee is typically an administrative law judge, while the associates are representatives of the interests of employers and claimants. During the appeal, the officer(s) hears evidence from both the claimant and employer, conducts a cross examination, and issues a written ruling, called a decision. This decision is final, pending further appeal, in all states except four, in which referees are permitted to reconsider their decisions within a certain time limit.<sup>8</sup>

Although not required by the Social Security Act, all but three states also provide claimants and employers the opportunity to file a second administrative appeal, usually called a higher authority or higher level appeal.<sup>9</sup> Again, filing time requirements vary across states, ranging from 8 to 30 calendar days after a lower authority appeal decision has been made. In about half of the states, a board of review or board of appeals is specifically formed to decide UI higher authority appeals. These boards are appointed by the Governor and consist of between three and seven members, who represent labor, employers, and the public.<sup>10</sup> In the other states, an existing commission or agency head serves as the higher appeal authority. All states allow these decisions to be appealed to the state courts for judicial review.

## **TRENDS IN DETERMINATIONS AND DENIALS**

### **Determination Rates**

In 1994, 37 percent of all new claimant spells in the United States resulted in some form of a nonmonetary determination.<sup>11</sup> The total number of nonseparation determinations (3.4 million) was slightly higher than the number of separation determinations (3.2 million). Nonseparation determinations, however, have generally been decreasing and separation determinations have been increasing as a share of total determinations since 1978.

### ***Determination Rates for Separation Issues***

In 1994, approximately 18 percent of new claimant spells resulted in a *separation* determination. The ratio of separation determinations to new claimant spells has fluctuated over time, but has been increasing since its low of 11 percent in 1982 (column 1 in Table 1). Approximately half of the separation determinations in 1994 were for issues related to voluntary leaving and the other half were for misconduct.

TABLE 1. Determination Rates and Denials Rates, 1971-1994

Year	Separation Issues			Nonseparation Issues		
	Determination Rate per Initial Claim (percent)	Denials per Determination (percent)	Denial Rate per Initial Claim (percent)	Determination Rate per 10 Claimant Contacts (percent)	Denials per Determination (percent)	Denial Rate per 10 Claimant Contacts (percent)
1971	15	51	8	34	39	13
1972	17	53	9	39	38	15
1973	18	54	10	43	37	16
1974	15	55	8	35	38	13
1975	15	54	8	29	38	11
1976	18	54	10	41	37	15
1977	19	53	10	43	37	16
1978	20	53	11	49	36	18
1979	18	55	10	42	37	15
1980	14	57	8	31	41	13
1981	14	56	8	31	43	13
1982	11	55	6	23	46	11
1983	13	53	7	24	45	11
1984	14	53	7	27	46	13
1985	14	52	7	25	51	13
1986	15	53	8	25	56	14
1987	16	53	9	26	57	15
1988	17	54	9	27	57	15
1989	17	54	9	25	60	15
1990	16	55	9	23	62	14
1991	15	56	8	20	61	13
1992	16	56	9	20	61	12
1993	18	56	10	21	61	13
1994	18	56	10	21	60	13

SOURCE: Unemployment Insurance Required Reports.

Given the wide range of states' procedures for detecting nonmonetary eligibility issues, it is to be expected that determination rates vary significantly by state. The variation across states in determination rates for separation issues is shown in Table 2. (The first column of Table 2 displays the number of separation determinations per new UI spell and the second column displays the state rank, with the state with the highest determination rate, Nebraska, receiving a rank of 1.) The 1994 ratio of separation determinations to new claimant spells ranged from a low of 8 percent in the Virgin Islands and Kentucky to a high of 89 percent in Nebraska.<sup>12</sup> As mentioned previously, significant differences in determination rates across states are likely to arise due to different detection procedures, as well as varying definitions of what constitutes a determination.

### *Determination Rates for Nonseparation Issues*

Because claimants may become ineligible at any time while receiving UI, nonseparation issues are usually expressed as a percentage of weekly claimant contacts (i.e., all weeks that UI benefits are claimed by active UI claimants). In this paper, nonseparation determinations are expressed per 10 weekly claimant contacts. In 1994, of every 10 claimant contacts, 2.1 (or 21 percent) resulted in a *nonseparation* determination (see column 4 of Table 1).

In 1994, 38 percent of nonseparation determinations were due to "able and available" issues, 25 percent were due to claimants' earning potentially disqualifying income, 21 percent were due to reporting requirements, and 5 percent were due to refusal of suitable work.<sup>13</sup> Over time, the determination rate for able and available issues has decreased, becoming a much smaller proportion of total nonseparation determinations.

By state, the 1994 rate of nonseparation determinations per 10 claimant contacts ranged from a low of 2 percent in Tennessee to a high of 84 percent in Utah (see column 1 in Table 3).

### **Denial Rates**

The following two measures can be used to describe the frequency with which denials occur: the ratio of denials to determinations and the ratio of denials to either new claimant spells (for separation issues) or weekly claimant contacts (for nonseparation issues). Table 1 displays both of these measures. Thus, the denial rate per new claimant spell (column 3 in Table 1) depends on both the determination rate per new claimant spell (column 1) and the denial rate per

TABLE 2. Determination Rates and Denials Rates for Separation Issues, By State, 1994

State	Determination		Denials per		Denial	
	Rate per Initial Claim (Rate)	(Rank)	(Rate)	(Rank)	Rate per Initial Claim (Rate)	(Rank)
Alabama	12%	48	78%	2	9%	28
Alaska	16	30	73	8	12	18
Arizona	30	7	57	30	17	8
Arkansas	18	26	75	5	13	13
California	15	34	47	41	7	42
Colorado	43	2	70	9	30	2
Connecticut	21	16	26	53	5	49
Delaware	19	25	74	6	14	12
District of Columbia	14	41	64	16	9	31
Florida	25	13	64	15	16	11
Georgia	21	18	63	18	13	15
Hawaii	17	28	50	37	8	34
Idaho	15	33	60	24	9	29
Illinois	20	20	57	29	11	21
Indiana	35	4	57	27	20	3
Iowa	19	22	57	28	11	23
Kansas	25	12	43	47	11	25
Kentucky	8	52	65	14	5	50
Louisiana	35	3	55	33	20	4
Maine	15	37	40	49	6	48
Maryland	27	9	70	10	19	5
Massachusetts	14	39	56	31	8	36
Michigan	21	17	60	23	13	16
Minnesota	16	29	45	46	7	41
Mississippi	23	14	75	4	17	7
Missouri	27	10	60	22	16	9
Montana	16	32	62	20	10	27
Nebraska	89	1	83	1	74	1
Nevada	33	5	56	32	18	6
New Hampshire	26	11	48	40	12	17
New Jersey	12	49	68	13	8	37
New Mexico	20	19	59	25	12	20
New York	15	36	51	36	8	40
North Carolina	12	45	69	12	9	32
North Dakota	14	40	47	43	7	46
Ohio	13	43	62	19	8	38
Oklahoma	23	15	59	26	13	14
Oregon	19	21	42	48	8	35
Pennsylvania	11	50	47	42	5	51
Puerto Rico	12	47	35	52	4	52
Rhode Island	12	46	49	39	6	47
South Carolina	14	42	77	3	11	26
South Dakota	19	23	63	17	12	19
Tennessee	10	51	69	11	7	43
Texas	32	6	50	38	16	10
Utah	28	8	40	50	11	22
Virgin Islands	8	53	46	45	4	53
Virginia	16	31	53	35	8	33
Vermont	15	35	73	7	11	24
Washington	17	27	53	34	9	30
West Virginia	13	44	61	21	8	39
Wisconsin	15	38	46	44	7	45
Wyoming	19	24	36	51	7	44

SOURCE: U.S. Department of Labor (1995b).

TABLE 3. Determination Rates and Denials Rates for Nonseparation Issues, By State, 1994

State	Determination Rate per 10 Claimant Contacts		Denials per Determination		Denial Rate per 10 Claimant Contacts	
	(Rate)	(Rank)	(Rate)	(Rank)	(Rate)	(Rank)
Alabama	53%	3	84%	10	45%	2
Alaska	30	13	70	25	21	13
Arizona	44	7	70	26	30	8
Arkansas	20	24	85	7	17	16
California	21	23	63	32	13	26
Colorado	38	10	90	4	34	6
Connecticut	22	22	48	49	10	34
Delaware	10	46	88	5	8	40
District of Columbia	7	52	75	20	5	50
Florida	8	48	78	16	6	45
Georgia	13	43	94	2	12	31
Hawaii	17	35	75	19	13	27
Idaho	35	11	99	1	35	5
Illinois	18	30	51	48	9	38
Indiana	18	31	85	8	15	19
Iowa	17	34	58	37	10	36
Kansas	26	18	65	30	17	17
Kentucky	8	49	68	27	5	49
Louisiana	30	14	86	6	26	11
Maine	50	5	59	36	30	9
Maryland	24	20	58	38	14	24
Massachusetts	15	39	55	41	9	39
Michigan	19	27	54	44	10	35
Minnesota	19	26	82	13	16	18
Mississippi	23	21	53	45	12	30
Missouri	38	9	84	12	32	7
Montana	12	44	56	39	6	44
Nebraska	76	2	79	15	60	1
Nevada	18	29	84	11	15	20
New Hampshire	52	4	55	43	28	10
New Jersey	13	41	55	42	7	42
New Mexico	16	38	39	52	6	46
New York	25	19	47	50	12	32
North Carolina	17	36	74	21	12	28
North Dakota	20	25	75	17	15	21
Ohio	13	42	61	33	8	41
Oklahoma	11	45	60	35	7	43
Oregon	18	32	79	14	14	23
Pennsylvania	27	17	18	53	5	51
Puerto Rico	16	37	72	22	12	33
Rhode Island	17	33	70	24	12	29
South Carolina	9	47	63	31	6	48
South Dakota	49	6	75	18	37	4
Tennessee	2	53	67	29	1	53
Texas	27	15	53	46	14	22
Utah	84	1	53	47	44	3
Virgin Islands	7	50	84	9	6	47
Virginia	27	16	92	3	25	12
Vermont	14	40	68	28	10	37
Washington	19	28	71	23	13	25
West Virginia	7	51	56	40	4	52
Wisconsin	30	12	61	34	18	15
Wyoming	41	8	45	51	18	14

SOURCE: U.S. Department of Labor (1995b).

determination (column 2).<sup>14</sup> Table 1 shows that in 1994, 56 percent of all *separation* determinations resulted in denials and 60 percent of all *nonseparation* determinations resulted in denials.

### ***Denial Rates for Separation Issues***

In 1994, approximately 10 percent of all new claimant spells resulted in a *separation* denial (see column 3 in Table 1). The ratio of separation denials to new claims has fluctuated over time, but has been increasing since a low of 6 percent in 1982.

In 1994, the percentage of determinations that resulted in denial was 72 percent for voluntary leaving issues and 41 percent for misconduct issues. Thus, voluntary leaving determinations are more likely to result in a denial of benefits than are misconduct determinations. In the majority of states, these denials resulted in a disqualification of benefits for the duration of the individual's unemployment spell.

By state, the 1994 percentage of new claimant spells that resulted in a separation denial ranged from a low of 4 percent in Puerto Rico and the Virgin Islands to a high of 74 percent in Nebraska.<sup>15</sup> The fifth column of Table 2 displays the number of separation denials per new claimant spell and the sixth column displays the state rank.

### ***Denial Rates for Nonseparation Issues***

In 1994, of every 10 claimant contacts, 1.3 (or 13 percent) resulted in a *nonseparation* denial. Although the nationwide rate of nonseparation denials per determination has increased significantly over time, the rate of nonseparation determinations per claimant contact has decreased (see columns 4 and 5 in Table 1). Over time, this has resulted in a fairly steady rate of nonseparation denials per claimant contact. In 1994, 37 percent of denials were for able and available issues, 25 percent were due to disqualifying income, 22 percent were due to reporting requirements, and 2 percent were due to refusal of suitable work.<sup>16</sup>

In 1994, nonseparation denials were most likely to occur in determinations involving violations of reporting requirements (66 percent of such determinations were denied), earning disqualifying income (61 percent denied), or being unable or unavailable for work (59 percent denied). Denials for these issues resulted in a temporary denial of benefits; as soon as the claimant's condition changed, he or she regained UI benefits. Only 28 percent of determinations

related to refusing suitable work resulted in a denial of benefits. (In most states, an individual disqualified for this issue would subsequently be ineligible for benefits for the remainder of his or her unemployment spell). Over time, the rate at which denials are made per determination has increased significantly for able and available issues and for reporting requirements. The rate has remained fairly stable with regard to other issues.

Table 3 shows that the 1994 rate of nonseparation denials per 10 claimant contacts ranged from a low of 1 percent in Tennessee to a high of 60 percent in Nebraska.

### **Summary**

Overall, the number of times a state denies benefits to UI claimants on the basis of nonmonetary eligibility issues is more dependent on the number of determinations than on the percentage of determinations that lead to denials. Currently, 10 percent of all new claimant spells result in a separation denial and 1.3 percent of all claimant contacts result in a nonseparation denial. There have not been large shifts in the nationwide denial rates, however, the rate of determinations and the percentage of determinations resulting in denials differ for separation and nonseparation issues. In cases involving separation issues, both rates have been increasing slightly, while in cases involving nonseparation issues, the determination rate has been increasing but the percentage of determinations resulting in a denial has been decreasing. In addition, some nonmonetary issues are more likely to result in denials than others. Most notably, voluntary leaving issues and violations of reporting requirements are most likely to result in denials, and issues related to misconduct and refusal of suitable work are least likely to result in denials. There is large variation across states in their reported determination and denial rates.

### **TRENDS IN APPEALS**

Because of data limitations, all trends in appeals are examined using data on lower and higher authority *appeals decisions*, rather than data on *appeals filed*. Consequently, the terms "appeals" and "decisions" are used interchangeably throughout this section and refer to appeal decisions.<sup>17</sup>

#### **Lower and Higher Authority Appeals**

Total appeals have increased substantially between 1971 and 1994, with 1.2 million total appeals decisions in 1994, more than 3 times the total in 1971. Lower authority appeals constitute the

majority of all appeals and have also been responsible for most of the increase in the number of total appeals. The number of lower authority appeals decisions in 1994 was almost one million, also more than 3 times the number in 1971.

The number of lower authority appeals has increased during recessionary periods, in large part because of the increased number of initial claims for UI benefits filed during recessions. However, recession-induced increases in lower authority appeals have not entirely accounted for the overall increase. Lower authority appeals as a percentage of initial claims have increased steadily, from 1.8 percent in 1971 to 5.6 percent in 1994 (see Figure 1).<sup>18</sup> Similarly, lower authority appeals expressed as a percentage of total denials have increased sharply, from 11 percent in 1971 to 26 percent in 1994.<sup>19</sup>

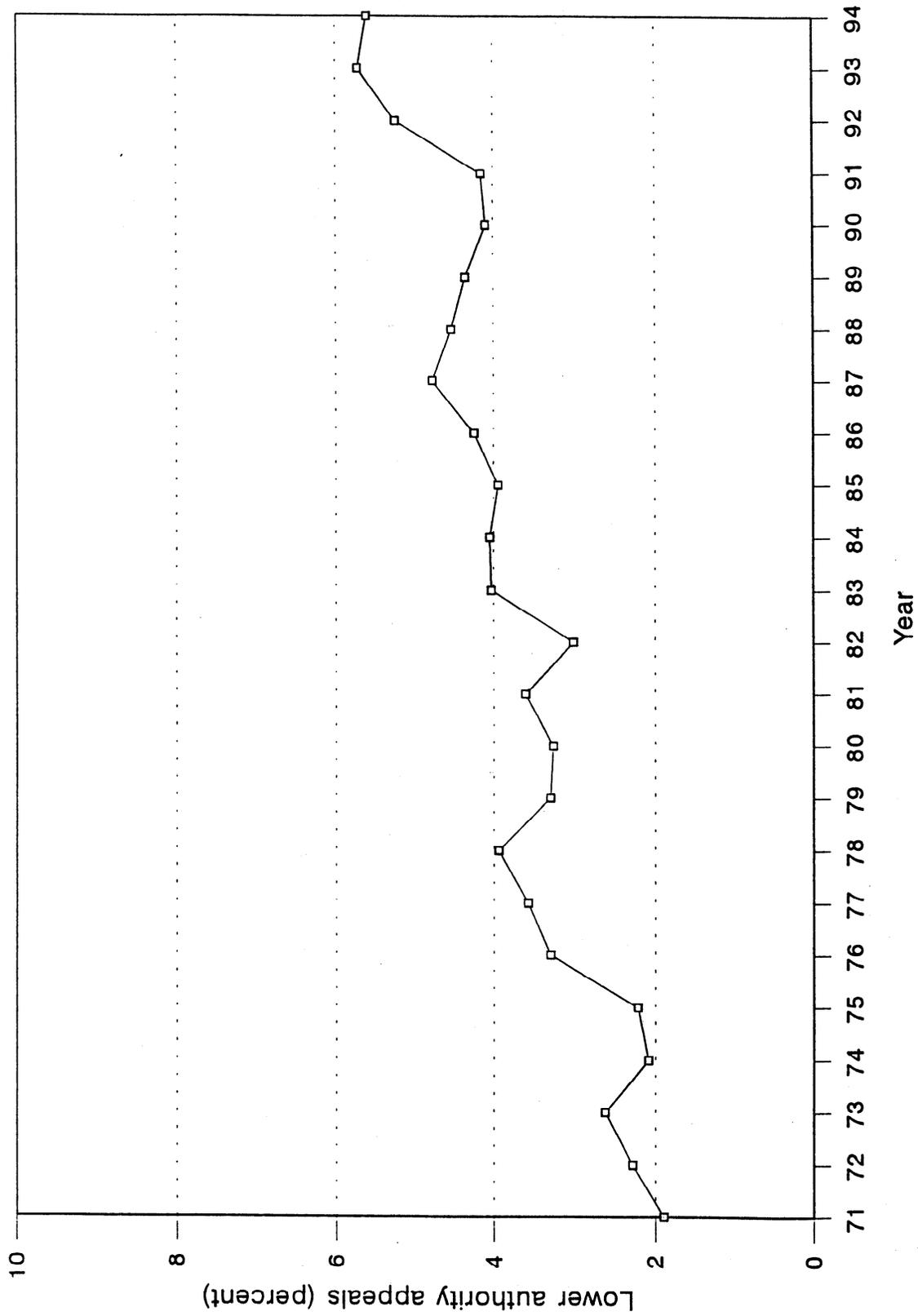
Higher authority appeals comprise a much smaller proportion of total appeals than lower authority appeals, but have also displayed a steady upward trend between 1971 and 1994. The number of higher authority appeals in 1994 was 180,000, almost 4 times greater than in 1971. However, as a proportion of lower authority appeals decisions, higher authority appeals have remained relatively constant, fluctuating between about 15 percent and 20 percent over the past 23 years.

By state, these numbers vary greatly. Table 4 displays the percentage of initial claims that were denied and appealed in each state in 1994. Tennessee had the lowest percentage of denials per initial claim at 7.8 percent, while Nebraska had the highest at 122.5 percent.<sup>20</sup> Total lower authority appeals as a percentage of initial claims ranged from 1.7 percent in Idaho to 14.4 percent in Colorado. Appeals as a percentage of denials ranged from 4.2 in Nebraska to 72.7 in the District of Columbia.<sup>21</sup>

### **Lower Authority Appeals Decisions By Issue**

Between 1971 and 1994, appeals of separation determinations accounted for, on average, about 60 percent of all lower authority appeals, while appeals of nonseparation determinations accounted for about 40 percent of the total. The share of separation appeals has increased slightly throughout the 1980s and early 1990s, equalling 67 percent of total decisions in 1994. Separation appeals as a percentage of separation denials have increased from about 15 percent in 1971 to about 38 percent in 1994, while nonseparation appeals as a percentage of nonseparation denials have increased from 8 percent to 16 percent.

FIGURE 1. Total Lower Authority Appeals as a Percentage of Total Initial Claims, 1971-1994



SOURCE: U.S. Department of Labor (1995b).

TABLE 4. Denials and Appeals as a Percentage of Initial Claims, By State, 1994

State	Denials as a Percentage of Initial Claims		Appeals as a Percentage of Denials		Appeals as a Percentage of Initial Claims	
	(Rate)	(Rank)	(Rate)	(Rank)	(Rate)	(Rank)
Alabama	37%	8	13%	47	5%	32
Alaska	30	16	10	49	3	48
Arizona	49	3	24	29	12	2
Arkansas	26	19	21	36	5	27
California	18	36	25	26	5	35
Colorado	62	2	23	30	14	1
Connecticut	17	41	38	10	6	21
Delaware	22	26	34	14	7	17
District of Columbia	16	44	73	1	11	3
Florida	23	22	43	7	10	10
Georgia	20	30	28	20	6	25
Hawaii	20	31	22	32	4	36
Idaho	34	11	5	50	2	51
Illinois	21	29	40	8	8	15
Indiana	32	12	27	24	9	12
Iowa	19	33	54	3	11	4
Kansas	26	17	40	9	10	6
Kentucky	8	50	37	12	3	47
Louisiana	43	5	24	28	10	5
Maine	31	14	16	44	5	30
Maryland	34	10	29	19	10	8
Massachusetts	18	39	32	16	6	26
Michigan	21	28	16	45	3	46
Minnesota	24	20	25	27	6	22
Mississippi	26	18	31	18	8	16
Missouri	41	6	18	42	7	18
Montana	16	42	11	48	2	50
Nebraska	123	1	4	51	5	28
Nevada	31	13	27	23	9	13
New Hampshire	35	9	17	43	6	24
New Jersey	16	43	38	11	6	23
New Mexico	18	38	56	2	10	7
New York	22	25	23	31	5	31
North Carolina	14	46	26	25	4	43
North Dakota	18	37	28	22	5	29
Ohio	15	45	14	46	2	49
Oklahoma	19	34	43	6	8	14
Oregon	19	35	21	34	4	41
Pennsylvania	9	49	46	4	4	39
Rhode Island	17	40	19	40	3	45
South Carolina	14	47	28	21	4	42
South Dakota	37	7	18	41	7	20
Tennessee	8	51	46	5	4	44
Texas	30	15	32	15	10	9
Utah	48	4	20	39	10	11
Vermont	21	27	21	37	4	37
Virginia	23	21	20	38	5	34
Washington	22	24	21	35	5	33
West Virginia	12	48	37	13	4	38
Wisconsin	20	32	22	33	4	40
Wyoming	22	23	32	17	7	19

SOURCE: U.S. Department of Labor (1995b).

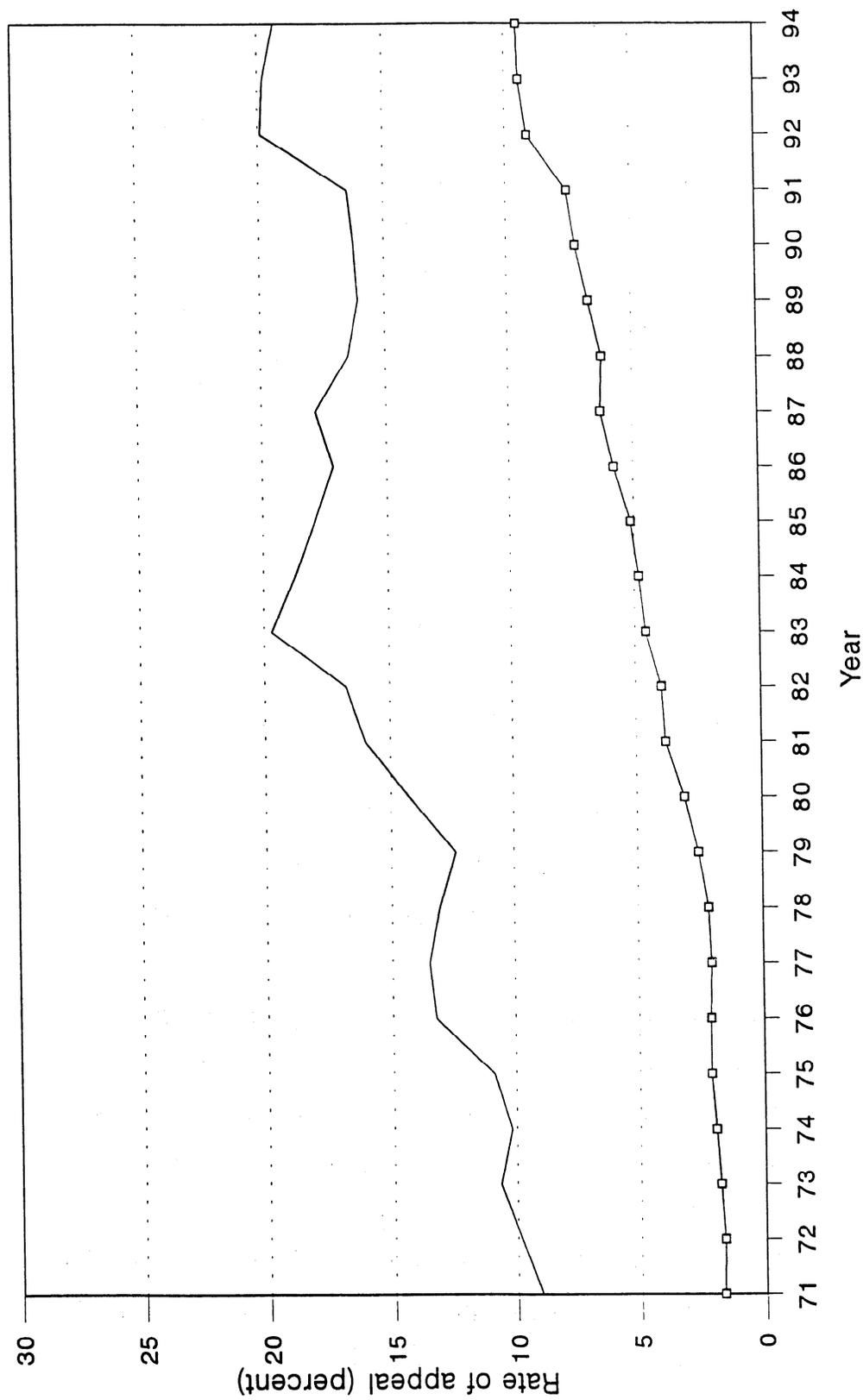
Furthermore, there have been substantial changes in the issues involved in lower authority appeals. Appeals of misconduct disputes have almost doubled since 1971. By 1994, misconduct appeals made up the largest proportion of total lower authority appeals, at 38 percent. Appeals of voluntary quit disputes, on the other hand, decreased from 40 percent of total lower authority appeals in 1971 to 30 percent in 1994. As a percentage of total lower authority appeals, appeals of refusal of suitable work, able and available for work, and labor dispute issues were significantly lower in 1994 than in 1971 (equalling 2 percent, 6 percent, and less than 1 percent, respectively, of total lower appeals in 1994). Other nonseparation appeals, which include issues of receiving disqualifying income and failing to comply with reporting requirements, were almost 2 times greater in 1994 than in 1971, equalling 24 percent of total lower authority appeals in 1994.<sup>22</sup>

#### **Lower and Higher Authority Appeals by Claimants and Employers**

Overall, claimants file a greater *number* of lower and higher authority appeals than do employers.<sup>23</sup> Claimant appeals made up about 74 percent and 68 percent of lower and higher authority appeals, respectively, in 1994. However, employers' lower authority appeal *rates* have increased more than claimants' in the past 10 years.<sup>24</sup> The employer rate of lower authority appeal has doubled over this period, from 5 percent in 1983, to 10 percent in 1994, while the claimant rate has levelled off (see Figure 2). The trend in the ratio of higher authority appeals to unfavorable lower authority appeals has been similar for claimants and employers between 1971 and 1994.

In addition, the difference in the success rates of employers and claimants has changed over time.<sup>25</sup> Currently, employers win a slightly higher percentage of the lower and higher authority appeals that they file than do claimants. Employer appellants, however, have won a smaller percentage of decisions at both the lower and higher appeals authorities between 1971 and 1994, while claimant appellants have won a larger percentage (see Figure 3). The gap between appellant success rates for employers and claimants at both appeal authorities declined substantially, with success rates converging around 32 percent for appellants in lower authority appeals and 18 percent in higher authority appeals. Thus, the success rate of employer appellants is falling at both the lower and higher appeals levels, while at the lower level, their appeal rate is increasing.

FIGURE 2. Claimant and Employer Rates of Lower Authority Appeal, 1971-1994

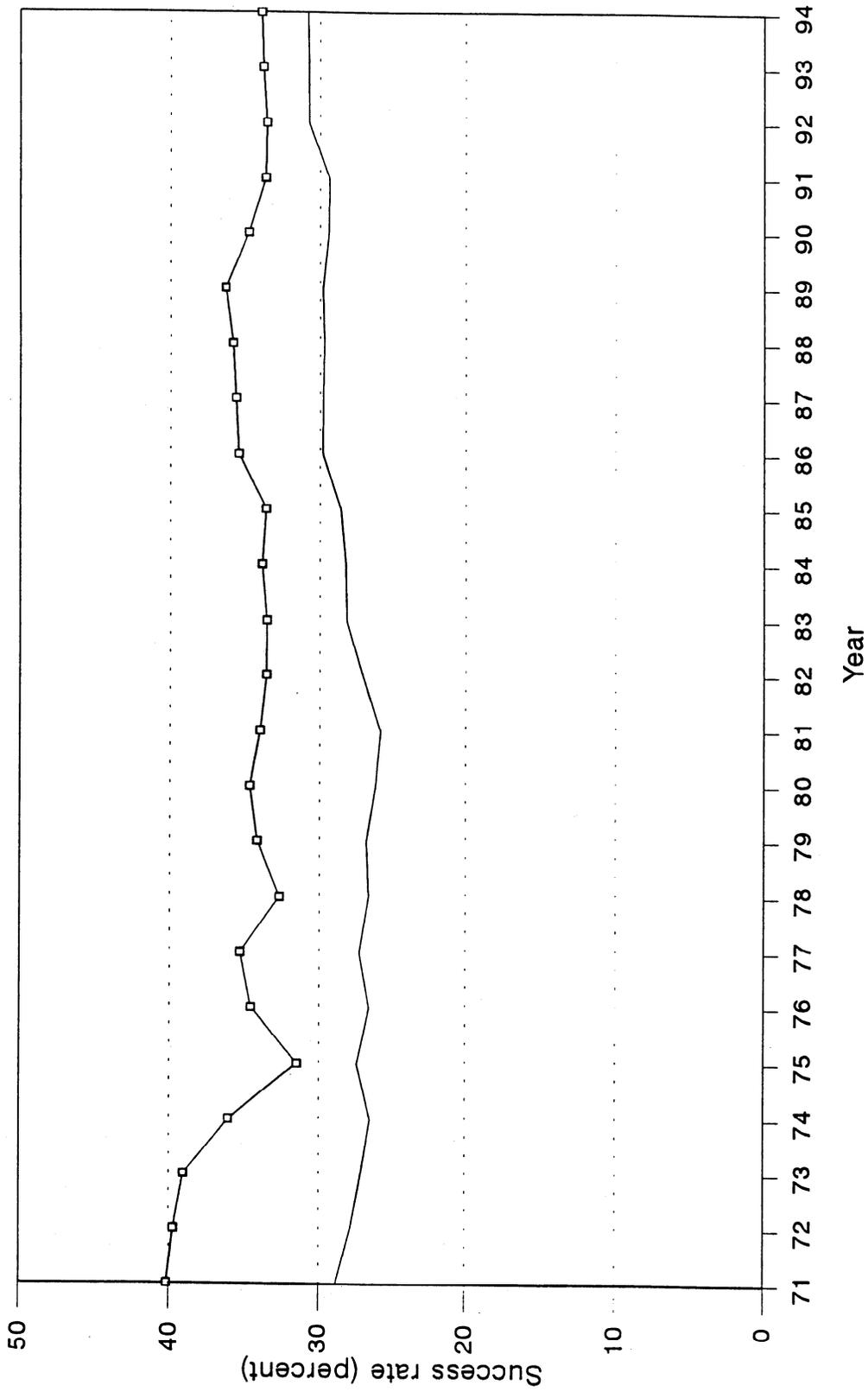


— Claimant rate    □ Employer rate

NOTE: Lower authority appeal rate is the percentage of unfavorable decisions received by the claimant (employer) that the claimant (employer) appealed.

SOURCE: U.S. Department of Labor (1995b).

FIGURE 3. Claimant and Employer Lower Authority Appeal Success Rates, 1971-1994



— Claimant rate    □ Employer rate

NOTE: Success rate is the percentage of lower authority appeals filed by the claimant (employer) that the claimant (employer) won.

SOURCE: U.S. Department of Labor (1995b).

## Summary

Between 1971 and 1994, the number of both lower and higher authority appeals has increased. Lower authority appeals as a percentage of both initial claims and denials have also increased. Furthermore, within lower authority appeals, separation appeals as a percentage of separation denials and nonseparation appeals as a percentage of nonseparation denials have both increased. In particular, appeals of misconduct issues have increased substantially, while appeals of voluntary quit, refusal of suitable work, and able and available for work issues have decreased.

The number of appeals filed by claimants is higher than the number filed by employers. Employers, however, have been appealing at an increasing rate over time. The success rate of employers in winning the appeals that they file has decreased at both lower and higher authorities, while the success rate of claimant appellants has increased. Both employers and claimants who file appeals are now winning about 32 percent of the lower authority appeals and about 18 percent of the higher authority appeals.

## EXPLAINING DENIAL RATES, APPEAL RATES, AND APPEAL OUTCOMES

The first half of this paper discussed trends in denial rates and appeal rates. As noted, there are significant differences in the denial and appeal rates both across states and over time. These trends are important because recent increases in the number of appeals require additional financial resources and time. While claimants clearly have a right to appeal their UI decisions, the increase in the number of appeals could signal problems elsewhere in the overall UI program, problems which may be related to changes in state administration and eligibility criteria. Because the denial and appeal rates are directly linked to UI eligibility and reciprocity, understanding the denial and appeal rates may improve understanding of the process of eligibility determination and how it affects UI claimants.

In order to understand the trends in denial rates, lower authority appeal rates, and lower authority appeal outcomes over time and across states, the authors conducted regression analysis on these issues. This section discusses the empirical analysis using annual, state-level, panel data from 1978 to 1990. The next section presents the empirical research of appeal rates and success rates for both employers and claimants using micro-level data on appeals in Wisconsin and Texas.

## **Factors Influencing Denial Rates, Appeal Rates, and Appeal Outcomes**

A number of factors which may influence the denial and appeal rates was considered in the statistical analysis.<sup>26</sup> These factors are grouped into four categories: policy variables, benefit variables, labor force characteristics, and state dummy variables. Each of these is discussed below.

### ***Policy Variables***

A number of policy variables were considered in the analysis, including those in the following general categories: solvency, nonmonetary eligibility rules, and state administration.

*Solvency Variables.* Three variables were used to measure the impact of state solvency on denial and appeal rates. Two of these variables measure a state's current ability to raise taxes—the effective employer tax rate as a percentage of taxable wages and the state taxable wage base (as measured by the difference between the state taxable wage base and the required federal taxable wage base). A third factor, the reserve ratio (net reserves as a share of total covered wages), was used to measure the health of the state UI trust fund.<sup>27</sup>

Lower state tax collections (as described by the combined effect of the tax rate and tax base) would be expected to result in a higher rate of denial (and consequently appeal). Similarly, the lower the reserve ratio, the higher the anticipated rates of denial and appeal. The denial rate and claimant appeal rate would be expected to be higher when states are facing solvency problems, presumably because fiscal factors can create pressures to deny benefits and to establish (legislatively or administratively) more restrictive eligibility rules. The employer appeal rate, however, may be lower when states are facing financial problems. This result is anticipated because when states deny benefits at higher rates, there are a smaller number of claims that employers can consider appealing.

*Nonmonetary Eligibility Rules.* Three variables were used to measure the severity of the penalty imposed for a nonmonetary eligibility disqualification. State law regarding the length of time an eligibility disqualification is imposed (either for the entire spell of unemployment or for a shorter period of weeks) was used for the issues of voluntary leaving, discharge due to misconduct, and refusal of suitable work.<sup>28</sup> As noted in Advisory Council on Unemployment

Compensation (1995), a number of states have increased the severity of their penalties in these areas between 1978 and the present.<sup>29</sup> For each issue, a more severe penalty (i.e., a durational disqualification) could result in increased denials (provided that states are able to detect the eligibility problems which may result in a determination of ineligibility).<sup>30</sup> On the other hand, a more severe penalty may discourage potential claimants from filing for benefits, thereby reducing the denial rate. Similarly, the relationship between these nonmonetary eligibility measures and appeal rates is difficult to predict *a priori*.

*Measures of State Administration.* Four variables were used to measure state administration: the quality of a state's nonmonetary determinations; the timeliness with which a state makes nonmonetary determinations; the extent to which Democrats control a state's legislature; and the denial rate of UI claims of a state. The quality and timeliness with which nonmonetary determinations are decided should affect the rates at which employers and claimants appeal decisions. If employers or claimants perceive that the state is doing a poor job in administering UI claims, then they may be more likely to appeal eligibility decisions made by the state. The extent to which Democrats are in control of the state legislature and the governor's office was also included in the model. This variable might serve as a proxy for measuring the state UI administration's attitude toward individuals applying for UI benefits. Presumably, a more Democratic state government could bring a more claimant-oriented perspective to the administration of the program, and a more Republican state government could bring a more employer-oriented perspective. Finally, when predicting appeal rates, the denial rate was also included to control for differences in the percentage of claimants for whom an appeal is an option; and when predicting appeal outcomes, information on the denial rate and the rate at which employers file appeals were used to control for these program differences across states.

### ***Benefit Variables***

Two measures of benefit generosity—actual duration of benefits and the ratio of average weekly benefit amount to state average weekly wage—were included in the analysis.<sup>31</sup> The more generous that benefits are perceived to be, the more attractive the UI program appears to potential claimants. Thus, more generous benefits would be expected to result in a higher denial rate, since more claimants are enticed to apply. Similarly, claimant and employer appeal rates

would be expected to be higher when benefits are more generous because of an increased application rate for UI benefits and an increased desire on the part of claimants to receive benefits.

### *Labor Force Characteristics*

Three variables were used to control for differences in the labor force across states and over time: the total unemployment rate, the percentage of the unemployed who are job losers, and the unionization rate. Higher unemployment rates and higher percentages of job losers occur during times of recession, when individuals are more likely to be laid-off, less likely to quit their jobs, and more likely to accept work. As a result, during periods of higher unemployment (and when a higher portion of the unemployed are job losers), there are likely to be fewer separation denials and fewer appeals. Higher rates of unionization are likely to be associated with fewer separation denials and appeals, since unions are often concentrated in industries which rely on temporary layoffs (e.g., construction, manufacturing), and unionized employees are more likely to be eligible for UI benefits than non-union employees.<sup>32</sup>

### *State Dummy Variables*

In addition to the policy variables, benefit variables, and labor force characteristics already discussed, dummy variables for each state were included in the model to determine the fixed effect of each state with respect to the denial rate, appeal rates, and appeal outcomes. Pennsylvania was omitted as the reference state because it has average denial and appeal rates. In general, a state coefficient that is statistically significant and positive (or negative) indicates that the state has a higher (or lower) denial, appeal, or success rate relative to the reference state (Pennsylvania), holding all other factors constant.

## **Discussion of Empirical Results**

### *Data and Model Specification*

The model was estimated using annual, state-level data from 1978 to 1990.<sup>33</sup> Data were excluded for the state of Nebraska, because its denial rates are extremely high and knowledgeable individuals in the Unemployment Insurance Service indicated that data submitted by Nebraska may not be consistent with data from other states. Similarly, Puerto Rico and the

Virgin Islands were excluded from the analysis because of issues regarding data reliability. Given the panel nature of the data (i.e., multiple observations for each state over a given number of years), the model was estimated using generalized least squares regression (GLS).<sup>34</sup> Table 5 displays the means for all the variables used.

The remainder of this section presents the results from the regressions, as well as geographic maps related to denial rates. Only those results which are statistically significant are discussed below.

### *Results for Separation and Nonseparation Denial Rates*

Different equations were estimated for separation issues (raised by an employer regarding a claimant's separation from work) and nonseparation issues (raised by a state agency regarding a claimant's ongoing eligibility for UI benefits). In these equations, the separation denial rate is expressed as a percentage of initial claims and the nonseparation denial rate is expressed as a percentage of claimant contacts. The denial rate results from the GLS regressions are presented in Table 6.

The model had greater explanatory power for differences across states and time for separation issues (29 percent of variation was explained when the state dummy variables were excluded) than for nonseparation issues (only 7 percent of variation was explained when state dummies were excluded). These results indicate that high separation denial rates are associated with the following: (1) nonmonetary eligibility penalties for separation issues which disqualify individuals for less than the full duration of unemployment (i.e., more lenient penalties on issues of voluntary quits and misconduct);<sup>35</sup> (2) lower weekly benefit amounts; (3) lower percentages of job losers; and (4) lower rates of unemployment. High nonseparation denial rates are associated with the following: (1) lower reserve ratios; (2) shorter duration of UI benefits;<sup>36</sup> (3) lower rates of unemployment; and (4) lower rates of unionization.

There is a large amount of state variation in denial rates that was not be explained by the policy variables in the models discussed above.<sup>37</sup> An examination of the patterns of denial rates across the United States reveals geographic clusters of high and low denial rates. Figure 4 maps the average separation denial rate between 1978 and 1990, and Figure 5 maps the nonseparation denial rate between 1978 and 1990. These maps indicate that states' denial rates display distinct geographical patterns. For example, Figure 5 displays a group of contiguous states in the east

Table 5. Means and Standard Deviations of Variables from Regressions, All States, 1978-1990

Variables:	Means	Standard Deviations
<i>Dependent Variables:</i>		
Separation Denial Rate	0.093	0.046
Nonseparation Denial Rate	0.153	0.098
Employer Appeal Rate	0.010	0.008
Claimant Appeal Rate	0.036	0.018
Employer Success Rate	0.360	0.147
Claimant Success Rate	0.280	0.071
<i>Explanatory Variables:</i>		
Denial Rate	0.211	0.099
Effective Tax Rate	0.012	0.010
State Tax Base Over Federal Level	2,269	3,474
Reserve Ratio (lagged 3 years)	1.09	1.04
Disqualification for Voluntary Quit	0.90	0.30
Disqualification for Refusing Work	0.69	0.46
Disqualification for Misconduct	0.71	0.45
State Government	2.02	0.97
Performance of Nonmonetary Determination	0.82	0.19
Timeliness of Nonmonetary Determinations	0.75	0.17
Actual Benefit Duration	13.6	2.7
Benefit Amount/Wages	0.37	0.05
Total Unemployment Rate	0.068	0.023
Percent Labor Force Unionized	0.17	0.07
Job Losers as Percent of Unemployed	0.48	0.08
Percent Appeals Filed by Employers	0.199	0.097

NOTE: Data are for 1978 to 1990 and include the District of Columbia and all states except Nebraska.

SOURCE: ACUC calculations using database compiled from the following: Council of State Governments (1970-1994), U.S. Department of Labor (1995a,b,c,d), and U.S. General Accounting Office (1993).

Table 6. Regression Results for Separation and Nonseparation Denials, All States, 1978-1990

Explanatory Variables	Separation Denial Rate/Initial Claim		Nonseparation Denial Rate/Claimant Contact	
Effective Tax Rate	0.051	(0.88)	-0.600	(0.49)
State Tax Base Over Federal Level	-0.0000002	(0.83)	-0.0000001	(0.57)
Reserve Ratio (lagged 3 years)	0.002	(0.22)	-0.010	(0.01)
Disqualification for Voluntary Quit	-0.022	(0.00)	-----	
Disqualification for Refusing Work	-----		0.007	(0.50)
Disqualification for Misconduct	-0.020	(0.00)	-----	
State Government	-0.002	(0.22)	-0.001	(0.77)
Actual Benefit Duration	0.0008	(0.36)	-0.007	(0.00)
Benefit Amount/Wages	-0.106	(0.01)	0.004	(0.97)
Total Unemployment Rate	-0.349	(0.00)	-0.468	(0.05)
Percent Labor Force Unionized	0.023	(0.48)	-0.257	(0.00)
Job Losers as Percent Of Unemployed	-0.148	(0.00)	-0.043	(0.40)
<b>State Dummy Variables:</b>				
Alabama	0.007	(0.58)	0.171	(0.00)
Alaska	0.000	(1.00)	0.149	(0.00)
Arizona	0.045	(0.00)	0.144	(0.00)
Arkansas	0.045	(0.00)	0.032	(0.32)
California	0.014	(0.18)	0.082	(0.00)
Colorado	0.119	(0.00)	0.221	(0.00)
Connecticut	0.005	(0.57)	0.045	(0.07)
Delaware	0.011	(0.21)	-0.033	(0.17)
District Of Columbia	0.072	(0.00)	0.013	(0.66)
Florida	0.086	(0.00)	0.052	(0.08)
Georgia	0.039	(0.00)	-0.056	(0.07)
Hawaii	0.029	(0.01)	0.103	(0.00)
Idaho	0.025	(0.03)	0.231	(0.00)
Illinois	0.038	(0.00)	0.046	(0.05)
Indiana	0.038	(0.00)	0.022	(0.48)
Iowa	0.050	(0.00)	0.031	(0.20)
Kansas	0.025	(0.02)	0.071	(0.01)
Kentucky	0.017	(0.09)	-0.033	(0.20)
Louisiana	0.089	(0.00)	0.047	(0.09)
Maine	0.005	(0.56)	0.108	(0.00)
Maryland	0.069	(0.00)	0.030	(0.25)

(continued)

Table 6. (continued)

Explanatory Variables	Separation Denial Rate/Initial Claim		Nonseparation Denial Rate/Claimant Contact	
Massachusetts	0.001	(0.93)	-0.028	(0.28)
Michigan	0.024	(0.01)	0.051	(0.05)
Minnesota	0.031	(0.00)	0.063	(0.01)
Mississippi	0.027	(0.04)	0.038	(0.26)
Missouri	0.050	(0.00)	0.118	(0.00)
Montana	0.039	(0.00)	-0.016	(0.51)
Nevada	0.110	(0.00)	0.100	(0.00)
New Hampshire	0.011	(0.33)	0.110	(0.00)
New Jersey	0.010	(0.34)	0.041	(0.11)
New Mexico	0.074	(0.00)	-0.008	(0.79)
New York	-0.002	(0.86)	0.131	(0.00)
North Carolina	-0.010	(0.43)	-0.103	(0.00)
North Dakota	0.016	(0.09)	0.029	(0.24)
Ohio	0.025	(0.00)	0.047	(0.04)
Oklahoma	0.073	(0.00)	-0.071	(0.01)
Oregon	0.023	(0.02)	0.135	(0.00)
Pennsylvania		-----		-----
Rhode Island	0.009	(0.30)	0.022	(0.34)
South Carolina	0.000	(0.98)	-0.065	(0.04)
South Dakota	-0.003	(0.75)	0.154	(0.00)
Tennessee	-0.017	(0.11)	-0.093	(0.00)
Texas	0.126	(0.00)	0.042	(0.15)
Utah	0.023	(0.03)	0.255	(0.00)
Vermont	0.019	(0.07)	-0.076	(0.00)
Virginia	-0.010	(0.39)	0.002	(0.94)
Washington	0.013	(0.21)	0.103	(0.00)
West Virginia	0.027	(0.01)	0.008	(0.77)
Wisconsin	0.019	(0.03)	0.019	(0.40)
Wyoming	-0.003	(0.78)	0.090	(0.00)
Constant	0.217	(0.00)	0.306	(0.00)
R <sup>2</sup> Statistic	0.82		0.72	

NOTES: Data are for 1978 to 1990 and include the District of Columbia and all states except Nebraska.

A GLS fixed effects model was used to estimate the equations.

Pennsylvania was omitted as the reference state.

Significance levels are noted in parentheses.

The R<sup>2</sup> statistics for these equations are inflated because of the inclusion of the 49 state dummy variables. When the state dummy variables were excluded from the models, the R<sup>2</sup> of the separation denial rate equation was 0.29 and of the nonseparation denial rate equation was 0.07.

SOURCE: ACUC calculations using database compiled from the following: Council of State Governments (1970-1994), U.S. Department of Labor (1995a,b,c,d), and the U.S. General Accounting Office (1993).

Figure 4. Separation Denial Rate, 1978-1990

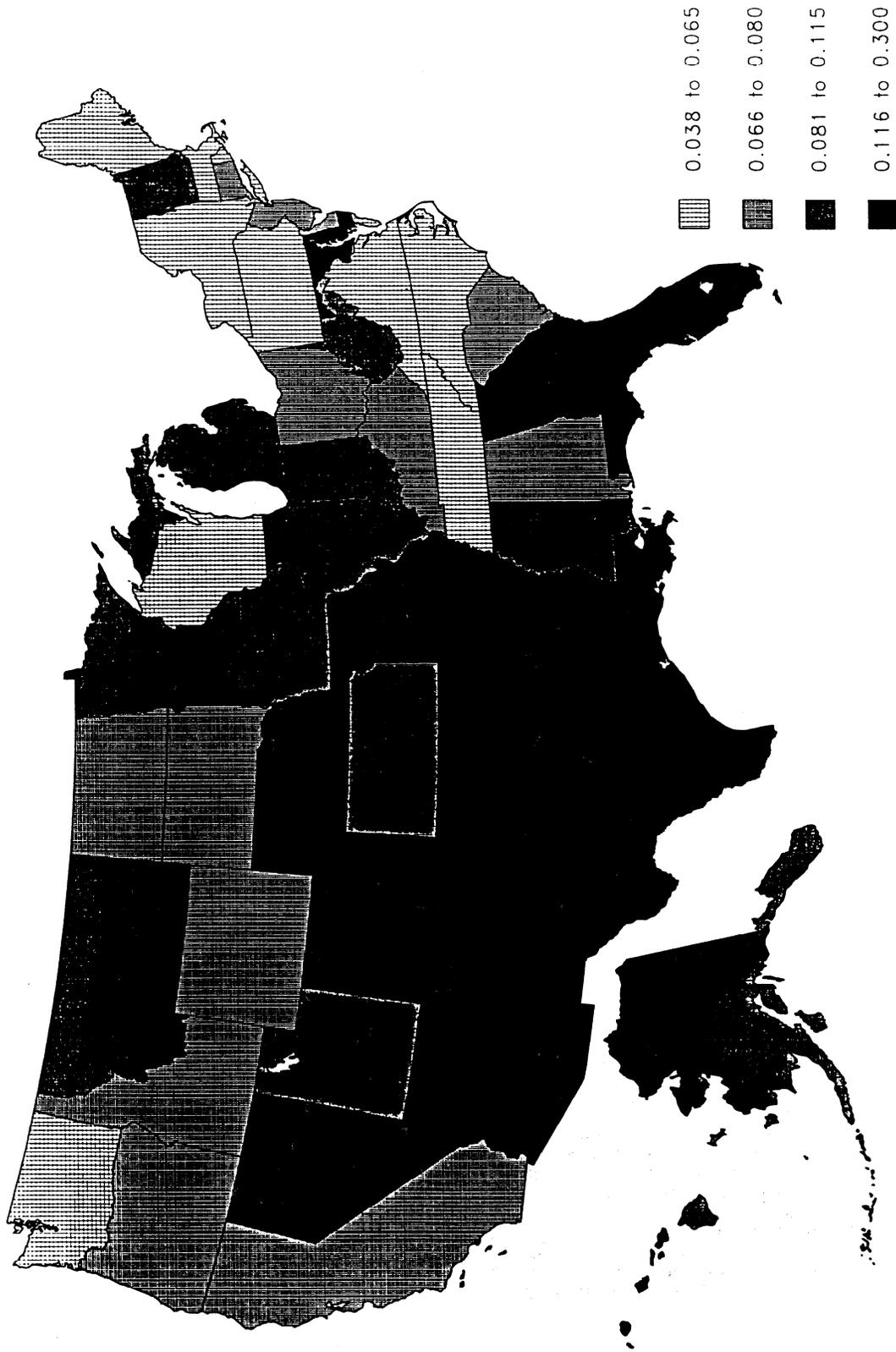


Figure 3. Nonseparation Denial Rate, 1978-1990



that have particularly low nonseparation denial rates, and a large group of states in the west which have high nonseparation denial rates. These patterns could be the result of a number of different factors, including cooperation among states or competition among states, either of which could have the effect of neighboring states adopting similar state laws or similar state administrative procedures, particularly in the area of eligibility.

The statistical significance of many of the coefficients of the state dummy variables in the GLS regressions presented in Table 6 demonstrates that the state variation that remains unexplained has an impact on denial rates. An examination of the geographic patterns of the significant state coefficients displayed in Figure 6 and Figure 7 finds clusters similar to those of denial rates illustrated in Figure 4 and Figure 5. For example, Figure 7 shows that the group of states in the west that have high nonseparation denial rates (from Figure 5), also have state coefficients that are positive and statistically significant. This indicates that their denial rates are higher than would be expected, given the effects of the other independent variables included in the analysis (all effects of state dummy variables are relative to Pennsylvania).

### ***Results for Employer and Claimant Appeal Rates***

Separate regression equations were estimated for employer and claimant appeal rates. In these equations, the employer (claimant) appeal rate is defined as the number of appeals brought by employers (claimants) as a percentage of all initial claims. The employer and claimant appeal rate results from the GLS regressions are presented in Table 7. The model had greater explanatory power for differences across states and time for the claimant appeal rate (34 percent of variation was explained when the state dummy variables were excluded) than for the employer appeal rate (17 percent of variation was explained when the state dummy variables were excluded). These results indicate that high employer appeal rates are associated with the following: (1) higher state taxable wage bases; (2) more stringent penalties for misconduct discharges; (3) higher denial rates; (4) longer durations of UI benefits; (5) lower weekly benefit amounts;<sup>38</sup> (6) lower rates of unemployment; (7) lower rates of unionization; and (8) higher percentages of job losers.<sup>39</sup> High claimant appeal rates are associated with the following: (1) higher effective tax rates; (2) more lenient penalties for refusal of suitable work; (3) more stringent penalties for misconduct; (4) higher denial rates; (5) longer durations of UI benefits; (6) lower weekly benefit amounts;<sup>40</sup> and (7) lower rates of unionization.

FIGURE 6. Separation Denial Rate State Coefficients

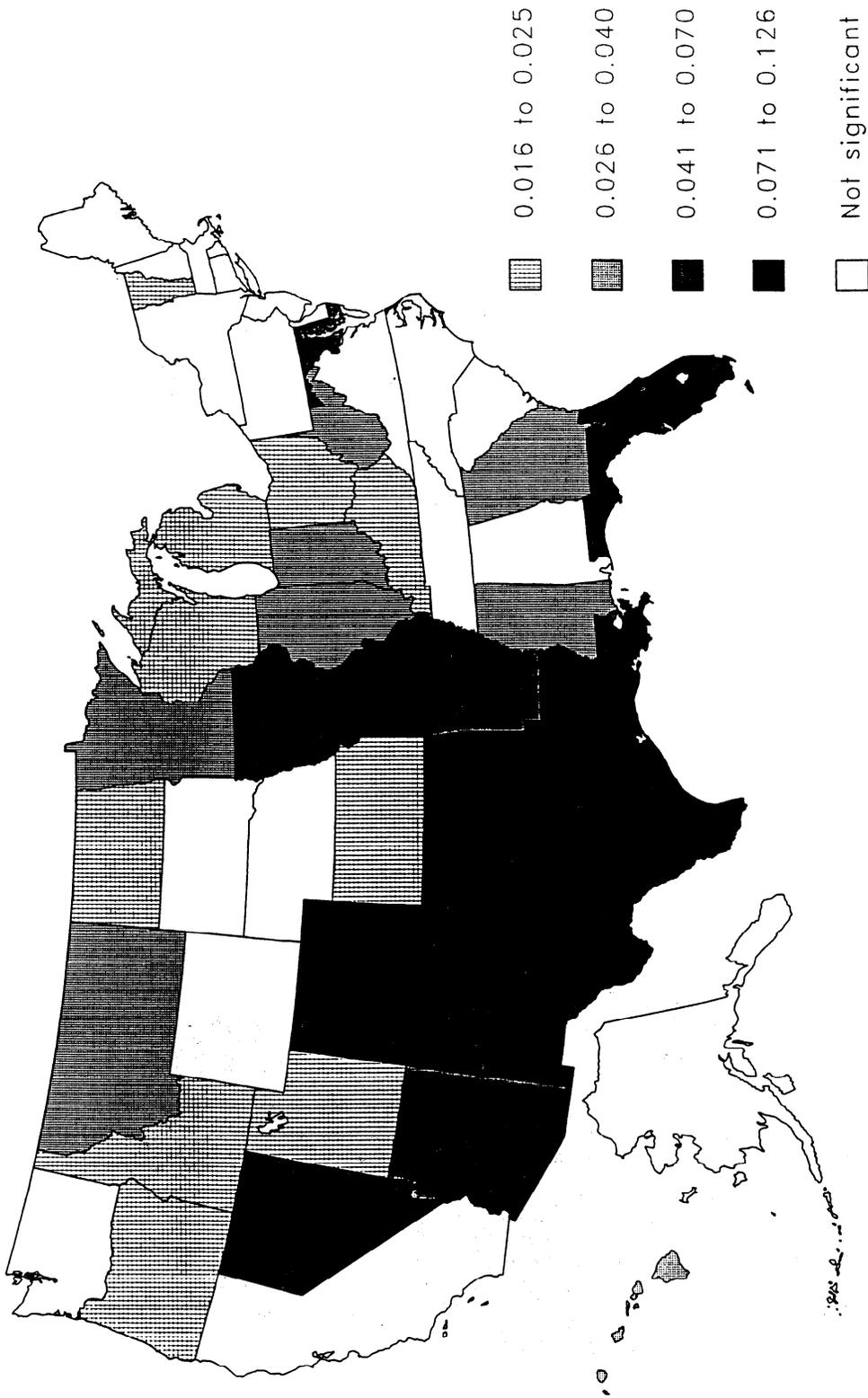




Table 7. Regression Results for Employer and Claimant Appeals, All States, 1978-1990

Explanatory Variables:	Employer Appeal Rate/Initial Claim		Claimant Appeal Rate/ Initial Claim	
Effective Tax Rate	-0.018	(0.73)	0.178	(0.06)
State Tax Base Over Federal Level	0.0000003	(0.01)	0.000000002	(0.99)
Reserve Ratio (lagged 3 years)	-0.0002	(0.22)	0.0003	(0.50)
Disqualification for Voluntary Quit	-0.0002	(0.80)	0.002	(0.24)
Disqualification for Refusing Work	-----		-0.003	(0.04)
Disqualification for Misconduct	0.005	(0.00)	0.010	(0.00)
State Government	-0.0004	(0.13)	-0.0004	(0.44)
Performance of Nonmonetary Determination	-0.0006	(0.47)	-0.002	(0.15)
Timeliness of Nonmonetary Determinations	-0.001	(0.21)	0.0004	(0.83)
Denial Rate per Initial Claim	0.017	(0.00)	0.052	(0.00)
Actual Benefit Duration	0.0003	(0.06)	0.0006	(0.02)
Benefit Amount/Wages	-0.017	(0.01)	-0.019	(0.09)
Total Unemployment Rate	-0.049	(0.00)	-0.040	(0.12)
Percent Labor Force Unionized	-0.030	(0.00)	-0.023	(0.02)
Job Losers as Percent of Unemployed	0.007	(0.04)	-0.004	(0.46)
State Dummy Variables:				
Alabama	0.006	(0.00)	0.001	(0.70)
Alaska	-0.006	(0.04)	-0.003	(0.53)
Arizona	0.001	(0.79)	0.020	(0.00)
Arkansas	-0.001	(0.79)	0.014	(0.00)
California	-0.001	(0.45)	-0.010	(0.00)
Colorado	0.020	(0.00)	0.044	(0.00)
Connecticut	0.024	(0.00)	0.006	(0.03)
Delaware	-0.004	(0.01)	0.006	(0.02)
District of Columbia	0.013	(0.00)	0.030	(0.00)
Florida	0.004	(0.03)	0.019	(0.00)
Georgia	0.012	(0.00)	-0.007	(0.05)
Hawaii	0.000	(0.90)	0.002	(0.51)
Idaho	-0.010	(0.00)	-0.025	(0.00)
Illinois	0.010	(0.00)	0.007	(0.01)
Indiana	-0.001	(0.54)	0.003	(0.40)
Iowa	0.019	(0.00)	0.018	(0.00)
Kansas	0.010	(0.00)	0.023	(0.00)

(continued)

Table 7. (continued)

Explanatory Variables	Employer Appeal Rate/Initial Claim		Claimant Appeal Rate/Initial Claim	
Kentucky	0.001	(0.42)	0.006	(0.04)
Louisiana	0.016	(0.00)	0.034	(0.00)
Maine	-0.002	(0.22)	-0.006	(0.02)
Maryland	0.007	(0.00)	0.024	(0.00)
Massachusetts	0.001	(0.45)	-0.003	(0.25)
Michigan	0.002	(0.15)	-0.011	(0.00)
Minnesota	0.003	(0.03)	0.004	(0.15)
Mississippi	-0.001	(0.72)	0.008	(0.06)
Missouri	0.004	(0.04)	0.011	(0.00)
Montana	-0.003	(0.04)	-0.014	(0.00)
Nevada	0.006	(0.00)	0.028	(0.00)
New Hampshire	-0.007	(0.00)	0.010	(0.00)
New Jersey	0.002	(0.27)	0.012	(0.00)
New Mexico	0.009	(0.00)	0.021	(0.00)
New York	-0.004	(0.04)	-0.006	(0.04)
North Carolina	-0.003	(0.13)	-0.007	(0.03)
North Dakota	-0.003	(0.10)	0.006	(0.02)
Ohio	-0.002	(0.12)	-0.017	(0.00)
Oklahoma	0.004	(0.01)	0.024	(0.00)
Oregon	-0.003	(0.11)	-0.005	(0.11)
Pennsylvania	-----	-----	-----	-----
Rhode Island	-0.004	(0.00)	-0.006	(0.02)
South Carolina	0.001	(0.59)	-0.001	(0.76)
South Dakota	0.001	(0.78)	0.009	(0.00)
Tennessee	-0.002	(0.33)	-0.007	(0.02)
Texas	0.010	(0.00)	0.025	(0.00)
Utah	-0.002	(0.40)	0.007	(0.03)
Vermont	0.001	(0.53)	0.001	(0.68)
Virginia	-0.001	(0.49)	-0.006	(0.08)
Washington	-0.002	(0.20)	-0.003	(0.32)
West Virginia	0.008	(0.00)	0.013	(0.00)
Wisconsin	0.003	(0.03)	-0.002	(0.46)
Wyoming	0.004	(0.01)	-0.005	(0.07)
Constant	0.010	(0.01)	0.020	(0.00)
R <sup>2</sup> Statistic	0.86		0.90	

NOTES: Data are for 1978 to 1990 and include the District of Columbia and all states except Nebraska. A GLS fixed effects model was used to estimate the equations. Pennsylvania was omitted as the reference state. Significance levels are noted in parentheses. The R<sup>2</sup> statistics for these equations are inflated because of the inclusion of the 49 state dummy variables. When the state dummy variables were excluded from the models, the R<sup>2</sup> of the employer appeal rate equation was 0.17 and of the claimant appeal rate equation was 0.34.

SOURCE: ACUC calculations using database compiled from the following: Council of State Governments (1970-1994), U.S. Department of Labor (1995a,b,c,d), and U.S. General Accounting Office (1993).

The statistical significance of most of the state coefficients from the GLS regressions presented in Table 7 indicates that unexplained state variation has a substantial impact on employer and claimant appeal rates. Furthermore, for the claimant appeal rate, the map of significant state coefficients (not presented in this paper) showed distinct geographic patterns. A group of contiguous states in the Midwest and Southwest have higher claimant appeal rates than would be expected.<sup>41</sup> The significant state coefficients for employer appeal rates showed no strong geographic patterns.

### *Results for Employer and Claimant Success Rates*

Separate regression equations were estimated for employer and claimant success rates. In these equations, success rate is defined as the number of appeals employers (claimants) won as a percentage of all lower authority appeals brought by employers (claimants). The employer and claimant success rate results from the GLS regressions are presented in Table 8. Although individual variables were significant in these regressions, these models had low predictive power (almost none of the variation was explained in either equation when the state dummy variables were excluded). The results indicate that among employer-initiated appeals, high employer success rates are associated with only the following variables: (1) lower effective tax rates and (2) lower rates of employer appeals. These results suggest that when states have low tax collections, employers are more likely to win their appeals at the lower authority.

A number of variables were significant predictors of claimant appeal success. The results indicate that among claimant-initiated appeals, high claimant success rates are associated with the following: (1) lower effective tax rates; (2) lower state taxable wage bases; (3) more lenient penalties for voluntary quit and misconduct issues; (3) more stringent penalties for refusal of suitable work; (4) more Democratic state government; (5) lower quality of nonmonetary determinations; (6) higher denial rates; (7) lower rates of unionization; and (8) higher percentages of appeals filed by employers. While the explanatory power of the model was low, most of the significant variables were anticipated.

Most of the states have insignificant coefficients in the employer success rate equation presented in Table 8, while in the claimant success rate equation, most of the states have significant coefficients. Thus, the state dummy variables were better able to explain the variation across states and over time for claimant success rates (66 percent of variation in

Table 8. Regression Results for Lower Authority Appeal Success, All States, 1978-1990

Explanatory Variables:	Lower Authority Appeal Success Rate			
	Employer		Claimant	
Effective Tax Rate	-4.209	(0.04)	-2.286	(0.00)
State Tax Base Over Federal Level	-0.000002	(0.64)	-0.000006	(0.00)
Reserve Ratio (lagged 3 years)	-0.011	(0.22)	-0.004	(0.18)
Disqualification for Voluntary Quit	0.017	(0.63)	-0.027	(0.04)
Disqualification for Refusing Work	-----		0.025	(0.01)
Disqualification for Misconduct	0.004	(0.88)	-0.015	(0.14)
State Government	0.008	(0.40)	0.009	(0.01)
Performance of Nonmonetary Determinations	-0.026	(0.38)	-0.017	(0.10)
Timeliness of Nonmonetary Determinations	-0.024	(0.55)	-0.003	(0.81)
Denial Rate per Initial Claim	-0.105	(0.33)	0.069	(0.07)
Actual Benefit Duration	0.004	(0.49)	0.003	(0.14)
Benefit Amount/Wages	-0.020	(0.93)	0.068	(0.42)
Total Unemployment Rate	-0.522	(0.34)	-0.015	(0.94)
Percent Labor Force Unionized	0.132	(0.54)	-0.238	(0.00)
Job Losers as Percent of Unemployed	0.053	(0.66)	0.047	(0.27)
Percent of Appeals Filed by Employers	-0.304	(0.01)	0.101	(0.02)
State Dummy Variables:				
Alabama	0.203	(0.01)	-0.033	(0.25)
Alaska	0.149	(0.15)	0.105	(0.00)
Arizona	0.072	(0.31)	-0.116	(0.00)
Arkansas	0.016	(0.84)	-0.070	(0.01)
California	0.017	(0.79)	0.041	(0.10)
Colorado	0.182	(0.02)	0.016	(0.56)
Connecticut	-0.060	(0.37)	-0.111	(0.00)
Delaware	0.326	(0.00)	0.044	(0.03)
District of Columbia	0.089	(0.19)	-0.024	(0.32)
Florida	0.041	(0.56)	-0.102	(0.00)
Georgia	0.303	(0.00)	-0.163	(0.00)
Hawaii	-0.014	(0.85)	0.027	(0.28)
Idaho	0.137	(0.06)	0.042	(0.09)
Illinois	0.004	(0.95)	-0.126	(0.00)
Indiana	0.064	(0.34)	-0.042	(0.07)
Iowa	0.154	(0.01)	0.050	(0.02)

(continued)

Table 8. (continued)

Explanatory Variables	Lower Authority Appeal Success Rate			
	Employer		Claimant	
Kansas	0.005	(0.93)	0.083	(0.00)
Kentucky	0.028	(0.64)	-0.076	(0.00)
Louisiana	0.093	(0.16)	-0.055	(0.02)
Maine	-0.038	(0.49)	-0.004	(0.84)
Maryland	0.112	(0.09)	0.118	(0.00)
Massachusetts	-0.091	(0.10)	0.009	(0.68)
Michigan	-0.050	(0.41)	0.100	(0.00)
Minnesota	-0.006	(0.92)	-0.031	(0.05)
Mississippi	-0.035	(0.67)	-0.122	(0.00)
Missouri	0.101	(0.15)	-0.078	(0.00)
Montana	0.082	(0.14)	-0.061	(0.00)
Nevada	0.107	(0.08)	-0.013	(0.54)
New Hampshire	0.038	(0.56)	-0.035	(0.16)
New Jersey	-0.044	(0.49)	0.007	(0.76)
New Mexico	0.123	(0.07)	-0.007	(0.77)
New York	-0.172	(0.01)	-0.050	(0.03)
North Carolina	0.215	(0.00)	-0.056	(0.02)
North Dakota	0.130	(0.02)	0.041	(0.04)
Ohio	0.044	(0.42)	-0.001	(0.95)
Oklahoma	0.036	(0.56)	-0.101	(0.00)
Oregon	0.059	(0.36)	0.078	(0.00)
Pennsylvania		-----		-----
Rhode Island	-0.004	(0.94)	0.080	(0.00)
South Carolina	0.213	(0.01)	-0.114	(0.00)
South Dakota	0.050	(0.46)	-0.060	(0.01)
Tennessee	0.069	(0.30)	-0.115	(0.00)
Texas	0.052	(0.47)	-0.047	(0.06)
Utah	0.055	(0.43)	0.059	(0.02)
Vermont	-0.005	(0.93)	-0.071	(0.00)
Virginia	0.128	(0.06)	-0.109	(0.00)
Washington	0.028	(0.65)	0.045	(0.04)
West Virginia	0.100	(0.12)	0.051	(0.03)
Wisconsin	-0.062	(0.25)	-0.048	(0.01)
Wyoming	0.137	(0.03)	-0.055	(0.01)
Constant	0.395	(0.01)	0.287	(0.00)
R <sup>2</sup> Statistic	0.35		0.66	

NOTES: Success rate is defined as percent of appeals won by party who appealed.  
 Data are for 1978 to 1990 and include the District of Columbia and all states except Nebraska.  
 A GLS fixed effects model was used to estimate the equations.  
 Pennsylvania was omitted as the reference state.  
 Significance levels are noted in parentheses.

The R<sup>2</sup> statistics for these equations are inflated because of the inclusion of the 49 state dummy variables. When the state dummy variables were excluded from the models the R<sup>2</sup> of both equations was 0.00.  
 SOURCE: ACUC calculations using database compiled from the following: Council of State Governments (1970-1994), U.S. Department of Labor (1995a,b,c,d), and U.S. General Accounting Office (1993).

success rates was explained when the state dummy variables were included) than for employer success rates (35 percent of variation in success rates was explained when the state dummy variables were included). Maps of the significant state coefficients (not presented in this paper) showed little geographic clustering of states with higher or lower than expected employer or claimant success rates.

## **Summary**

All of the regression equations presented in this section, especially the success rate equations, performed relatively poorly. There are two primary reasons for this poor performance. First, there are a number of variables that were unavailable, but could have added significant explanatory power to the model. For example, information on the administrative processes of the state UI programs and definitions of the nonmonetary eligibility requirements in each state might have improved the regression equations' prediction of state variation (when the state dummy variables were excluded). Second, states are probably not the ideal unit of measurement, especially in the equations estimating the appeal behavior of claimants and employers. Appeal-level microdata would provide a better framework for analyzing this behavior. The following section presents microdata for two states.

## **ANALYSIS OF APPEAL-LEVEL DATA**

The following questions can more appropriately be answered with appeal-level data: (1) whether the current structure which finances UI benefits encourages employers to appeal legitimate cases, and (2) what factors predict which party will win an appeal. This section provides background information on these two issues and results from an analysis using 1994 appeal-level data.

The appeal-level data are from Texas and Wisconsin, and include information on employer tax rates (in both states) and use of representation (in Wisconsin only). The data from Texas were a random sample consisting of 20 percent of all experience-rated employers in 1994, which were merged with the corresponding lower level appeals data for nonmonetary separation issues (3,561 hearings). The Wisconsin data included all lower level appeals resulting from a nonmonetary separation issue in 1994 (11,746 hearings).<sup>42</sup>

## **Effect of Experience Rating On Appeal Rates and Success Rates**

In most states, UI benefits are financed exclusively through employer payroll taxes that are assessed by the state.<sup>43</sup> States are currently required by the Federal Unemployment Tax Act to finance program benefits through an "experience-rated" tax structure. Under experience rating, the rate of taxation for a given tax schedule varies with an individual employer's unemployment experience.<sup>44</sup> In other words, employers who create the most cost for the system are assessed the highest tax rates.<sup>45</sup> It is often argued that experience-rated taxes allow state and federal governments to influence employers' behavior in socially beneficial ways. Economists, however, often assert that the entity upon which a tax is legislatively imposed (in this instance, employers) may be different from the entity which actually pays the tax.<sup>46</sup>

Recent research by Anderson and Meyer (1994), which focused specifically on the experience-rated UI tax that firms pay, indicates that firms are able to shift flat taxes (e.g., the minimum tax rate within that firm's industry) to their employees, but are much less able to shift the portion of their taxes that is experience-rated. Thus, a significant percentage of experience-rated taxes are absorbed by the individual firm.

As a result, an experience-rated UI tax (rather than a flat tax) is likely to promote UI program goals by affecting a firm's decision-making. One such program goal is to provide a financial incentive for employers to police the UI program by protesting ineligible claims for UI benefits and to participate in the state legislative process.<sup>47</sup> This program goal, however, may result in negative consequences, depending on the extent to which it is realized. For example, experience rating may result in inappropriate employer involvement in the eligibility determination and appeal processes if some employers respond to these financial incentives by contesting legitimate UI claims.

Since their UI taxes are directly related to the extent to which their former employees receive UI benefits, employers have an incentive to contest UI claims. In 1994, employers were responsible for 26 percent of lower authority appeals (approximately 256,000 employer appeals); as previously discussed, the rate of employer appeals has grown more rapidly than that of claimant appeals.

### ***Empirical Results: Appeal Rates***

The Texas and Wisconsin data confirm results of the U.S. Department of Labor, Office of the Inspector General (1985). They indicate that employers at the maximum tax rate are less likely to file appeals than employers at other tax rates. In Texas, employers filed 45 percent of all appeals involving employers at the maximum tax rate, and 55 percent of all appeals involving employers at a tax rate other than the maximum. In Wisconsin, employers filed 19 percent of all appeals involving employers at the maximum tax rate, and 31 percent of all appeals involving employers at a tax rate other than the maximum (see Table 9). This finding does not necessarily indicate that employers are making *excessive* use of the appeals system. Such a conclusion might be valid, however, if there were evidence that employer (or claimant) success rates vary systematically with an employer's level of experience rating.

### ***Empirical Results: Success Rates***

Tabulations of the data from Texas and Wisconsin do not provide evidence that employer success rates (i.e., the number of appeals won by employers as a percentage of all appeals brought by employers) vary with experience rating. Of the appeals filed by Texas employers at both the maximum tax rate and at all other tax rates, employers won 14 percent of their appeals. Of the appeals filed by employers in Wisconsin, employers at the maximum tax rate won 28 percent of their appeals and employers at all other tax rates won 26 percent of their appeals (see Table 9). Thus, this preliminary analysis of success rates by the level of experience rating does not provide evidence that employers are making excessive use of the appeals system.

One might conclude that employers are making excessive use of the appeals system if they won a substantially lower percentage of the appeals that they filed compared to the percentage of appeals won by claimants who file them. There is no evidence that this is the case on a national level. In 1993, nationwide, employers won 34 percent of the appeals that they filed and claimants won 31 percent of the appeals that they filed.

There is, however, considerable variation across states. In Wisconsin during 1994, employers won 28 percent of the appeals that they filed and claimants won 29 percent of the appeals they filed. In Texas, however, employers won 14 percent of the appeals that they filed and claimants won 67 percent of the appeals they filed. Texas employers filed a disproportionately higher share of appeals (55 percent compared to a national average of 26

Table 9. Employer Appeal Rate and Success Rate by Employer Tax Rate, Texas and Wisconsin

Tax Rate	Texas Data		Wisconsin Data	
	Appeal Rate	Success Rate	Appeal Rate	Success Rate
Less than Maximum	55	14	31	26
Maximum Rate	45	14	19	28

NOTE: Data are based on 3,561 lower authority appeal hearings from Texas and 11,746 lower authority appeal hearings from Wisconsin in 1994.

Employer success rate is defined as the number of appeals employers win as a percentage of all appeals filed by employers.

SOURCE: ACUC calculations using data provided by Department of Industry, Labor, and Human Resources, State of Wisconsin; and Texas Employment Commission.

percent) and claimants won a disproportionately higher share of appeals (78 percent compared to a national average of 31 percent).<sup>48</sup> These statistics from Texas, while by no means conclusive, would be consistent with the hypothesis that employers in that state make excessive use of the appeals system.

It is important to note that at least two primary factors influence the outcome of an appeal—which parties participated in the hearing and which, if any, parties were represented (by either an attorney or an advocate who is not an attorney, such as a union official or a third party employer representative). The regression results for Wisconsin presented later in this paper provide additional information on how tax rates influence employer success rates when important variables such as participation and representation are included. This more sophisticated analysis of the employer success rate also indicates that this rate does not vary significantly with the experience-rated tax rate.

### **Other Factors Influencing Appeals Outcomes**

Little research has been devoted to understanding the UI appeals process and the factors which affect the probability that either the employer or claimant wins. This section discusses two relevant factors that contribute to how well each side is able to present its case. First, it is important for both parties to participate in the hearing. Second, representation may affect the effectiveness of case presentation.

The importance of participation depends on which separation issue is in question. The burden of proof is placed on employers for misconduct issues and on claimants for voluntary quit issues. Thus, if an employer did not attend a hearing for a misconduct issue, the claimant would most likely win. If an employer did not attend a hearing for a voluntary quit issue related to good cause, however, the verdict would depend on whether the claimant could prove he or she had good cause for leaving.

#### ***Participation***

In both Texas and Wisconsin, claimants are more likely than employers to participate in lower authority appeal hearings. In Texas, claimants participated (including over the phone) in 70 percent of the total hearings and employers participated in 59 percent of the total hearings. When the claimant was the appellant, claimants participated in 86 percent of the hearings, while

employers participated in 53 percent of the hearings. When the employer was the appellant, however, claimants participated in 58 percent of the hearings, whereas employers participated in 65 percent of the hearings.

In Wisconsin, claimants participated (including over the phone) in 66 percent of the total hearings and employers participated in only 16 percent of the total hearings. The claimant was somewhat more likely to participate in the hearing when he or she was the appellant (68 percent) than when the employer was the appellant (59 percent). Employers participated in 16 percent of hearings in both circumstances. As expected, participation in the hearing increased the party's likelihood of winning when the other party did not participate. Table 10 displays these results.

### ***Representation***

A second factor that increases the likelihood that one side will win an appeal is the use of representation (either an attorney or an advocate who is not an attorney). A recent process analysis of lower authority appeals hearings in Wisconsin addressed this issue (Kritzer, 1995).<sup>49</sup> Kritzer finds that representation in general can have a significant affect on UI appeals hearings. Representatives often perform one or more of the following functions: (1) preparing their client for the UI hearing, (2) helping to frame the issue being appealed in a manner that best serves their client, (3) ensuring that necessary witnesses and documentation are brought to the hearing, and (4) asking relevant questions of the parties and their witnesses. In most states, representation of claimants and employers can be either by attorneys or by advocates who are not attorneys. There are, however, some differences between the type of representatives claimants are likely to use and those employers are likely to use.

Kritzer notes that claimant representatives are usually either union officials or law students. Because the fees that attorneys earn when representing claimants in UI cases are limited in most states (including Wisconsin), lawyers represent claimants relatively infrequently and often only when the case is connected in some way to another proceeding (e.g., an allegation of harassment or discrimination). In contrast, union officials usually represent claimants as part of their union duties and law students usually represent claimants as volunteers.

Because of the restricted fees that attorneys must charge claimants and the limited availability of most "voluntary" claimant representatives, claimants may be more likely to have

Table 10. Appearance and Success Rate, Texas and Wisconsin

	Who Appears at Hearing			
	Only Claimant	Only Employer	Both Parties	Neither Party
<b>Texas</b>				
Percent Appearing				
All Hearings	20	9	50	21
Claimant Appellant	36	3	50	12
Employer Appellant	7	14	51	28
Success Rate				
Claimant	87	N.A.	73	N.A.
Employer	4	46	12	2
Number of observations	712	320	1,792	737
<b>Wisconsin</b>				
Percent Appearing				
All Hearings	53	3	13	32
Claimant Appellant	55	3	13	29
Employer Appellant	46	3	13	38
Success Rate				
Claimant	43	1	33	2
Employer	23	59	33	30
Number of observations	6,168	324	1,508	3,746

**NOTE:** N.A. indicates the information is not available because sample sizes were too small to estimate. Success rate is defined as the number of appeals claimants (employers) win as a percentage of all appeals brought by claimants (employers).

**SOURCE:** ACUC calculations using data provided by Department of Industry, Labor, and Human Resources, State of Wisconsin; and Texas Employment Commission.

representation when they have a strong case. Thus, it is possible that a proportion of claimants with representation are more likely to win their cases because of the strength of the case, rather than the actual contribution the advocates make to the hearing process.

In general, employers are likely to be more familiar than claimants with the unemployment compensation appeals process. Employers frequently are represented by either someone from inside the firm or an agent outside the firm; this representative may or may not be an attorney. Larger firms are more likely to have either internal legal staff or human resources personnel who are familiar with the UI appeals system. Many firms also rely on third party employer representatives—agents who specialize in monitoring and controlling firms' payroll costs, including costs associated with workers' compensation and unemployment compensation. Part of the responsibility of third party representatives is to file appeals and represent firms at the actual hearings. As a result of the use of third-party representatives and because of the unrestricted fees that lawyers can charge employers (unlike claimants), employers are more likely than claimants to make use of representation in UI hearings. Additionally, firms that are large, have in-house experience with UI hearings, or contract with third-party representatives are more likely to bring a representative because of their easy access to these resources.

As a result of his observations of UI hearings in Wisconsin, Kritzer suggests that attorneys are not necessarily the most effective representatives in UI hearings for either claimants or employers. He finds that the most effective advocates are those that are most familiar with UI hearings procedures. Effective attorneys, therefore, typically specialize in employment law and appear at UI hearings frequently. Effective representatives who are not attorneys are generally knowledgeable about specific UI rules, regulations, and procedures and also specialize in providing representation at UI hearings.

In the appeal-level data used for this analysis, representation information was only available for Wisconsin. Furthermore, representation refers only to that by an attorney; unfortunately, the data do not include any other form of representation. In 1994 in Wisconsin, parties were represented in only 6 percent of all appeals. When one party was represented, the party increased its chance of winning the appeal. In addition, claimants were helped slightly more than employers when they were represented by an attorney (see Table 11). The following

Table 11. Success Rate by Representation, Wisconsin

Success Rate	Only Claimant Represented (2.2%)	Only Employer Represented (3.4%)	Both Parties Represented (0.4%)	Neither Parties Represented (94.1%)
Claimant	55	24	46	28
Employer	25	41	N.A.	28
Number of observations	260	380	52	11,054

NOTE: N.A. indicates the information is not available because sample sizes were too small to estimate. Success rate is defined as the number of appeals claimants (employers) win as a percentage of all appeals brought by claimants (employers).

SOURCE: ACUC calculations using data provided by Department of Industry, Labor, and Human Resources, State of Wisconsin.

section discusses a more sophisticated analysis using the Wisconsin data to determine how various factors influence the outcome of an appeal hearing.<sup>50</sup>

## **Analysis of the Wisconsin Data**

### *Variables Used in the Analysis*

Using the appeal-level data from Wisconsin (of 11,746 lower authority appeal hearings resulting from nonmonetary separation issues), two categories of factors were analyzed to determine their influence on the success rates of claimants and employers. These categories include variables describing characteristics of the employer and variables describing characteristics of the appeal hearing. Table 12 displays the means for the total sample of all variables used.

*Employer Characteristics.* Three variables were used to describe characteristics of the employer. The first measured the size of the firm, and was divided into four groups: firms with less than 20 employees, firms with between 20 and 99 employees, firms with between 100 and 499 employees, and firms with 500 or more employees. It is anticipated that larger employers are more likely to win an appeal, since they have more resources to devote to managing unemployment compensation costs. The second variable measured the experience-rated tax of the employer.<sup>51</sup> The expected effects of employer tax rates on employer success rates have been discussed previously in this paper. A third measure of whether the employer was in the manufacturing industry was included to further describe the type of employer.

*Characteristics of the Appeal Hearing.* Six variables were used to describe characteristics of the hearing. The first two were whether the claimant appeared at the hearing and whether the employer appeared at the hearing. The second two were whether the claimant was represented by an attorney at the hearing and whether the employer was represented by an attorney at the hearing.<sup>52</sup> With regard to employers, the attorney could either work internally for the firm or be hired as outside counsel. As discussed earlier, participation and representation are generally expected to increase the likelihood that the party wins. The fifth variable was whether the hearing involved consideration of multiple issues. Employers are more likely to win appeals involving multiple issues than are claimants because the issues that have been raised by the employer in these appeals are more complex and require more preparation and familiarity with

Table 12. Means and Standard Deviations of Variables From Regressions, Wisconsin, 1994

	Means	Standard Deviations
<i>Dependent Variables:</i>		
Employer Received Favorable Decision*	0.58	0.49
Claimant Received Favorable Decision*	0.42	0.49
<i>Explanatory Variables:</i>		
Employer Size:		
Less Than 20 Employees	8	6
Between 20 and 99 Employees	51	23
Between 100 and 499 Employees	247	113
500 or More Employees	2203	2242
Tax Rate	2.31	1.95
Manufacturing Industry*	0.29	0.45
Employer Appears at Hearing*	0.16	0.36
Claimant Appears at Hearing*	0.65	0.48
Employer is Represented at Hearing*	0.03	0.16
Claimant is Represented at Hearing*	0.04	0.19
Multiple Issues Contested*	0.33	0.47
Telephone Hearing*	0.18	0.38

NOTES: Data are based on 11,746 lower authority appeal hearings from Wisconsin in 1994. The means of variables with an asterisk (\*) are percentages of the total sample. For example, the mean value of 0.58 for the first dependent variable indicates that employers received a favorable decision in 58 percent of all appeals brought.

SOURCE: ACUC calculations using data provided by Department of Industry, Labor, and Human Resources, State of Wisconsin.

UI laws and the appeals system. The final variable was whether the appeal hearing was conducted by telephone or in-person; the effect of this variable is difficult to predict.

The issue being appealed is an important characteristic of the hearing that was not available in this data and, therefore, not used in the equations. As previously discussed in this paper, this is an important variable because the party who has the burden of proof in a given appeal hearing varies with the issues being disputed.

### *Model Specification*

The data were divided into two subsamples based upon which party filed the appeal. The employer filed the appeal in 3,583 of the cases, the claimant in 8,163. Two equations were estimated—one for each subsample. The dependent variable in each equation is the success rate, defined as whether an employer (claimant) won the appeal that the employer (claimant) filed. Because the dependent variables are dichotomous (i.e., they equal one if the employer (claimant) won the appeal and zero if the employer (claimant) did not win the appeal), the models were estimated using a logistic regression.<sup>53</sup>

The results of these regressions are presented in Table 13. The numbers displayed in this table are the log odds ratios associated with each variable. The log odds ratio indicates the change in the likelihood of an event occurring (in this case whether or not the employer (claimant) won the appeal) caused by each explanatory variable, holding all other factors constant. A log odds ratio greater than one denotes an increase in the likelihood of the event, while a log odds ratio less than one denotes a decrease in the likelihood of the event. For example, according to the results of the regressions in Table 13, an employer who appeared at a hearing was 2.027 times more likely to win the appeal than an employer who did not appear. In contrast, an employer was only 0.623 times (about two-thirds) as likely to win an appeal when the claimant appeared at the hearing than when the claimant did not appear. These results are discussed in the following sections.

### *Results for Employer Success Rate*

The model for employers correctly predicted whether the employer would win or lose an appeal in 72 percent of the cases and was statistically significant, as indicated by the model chi square of 117.<sup>54</sup> These results indicate that employers are more likely to win an appeal when: (1) the

Table 13. Regression Results for Employer and Claimant Success Rates, Wisconsin, 1994

Explanatory Variables:	Received Favorable Decision	
	Employers	Claimants
<b>Employer Size:</b>		
Less than 20 Employees	-----	-----
Between 20 and 99 Employees	1.090 (0.44)	0.813 (0.01)
Between 100 and 499 Employees	1.355 (0.01)	0.845 (0.03)
500 or More Employees	1.345 (0.01)	0.742 (0.00)
Tax Rate	0.986 (0.53)	1.046 (0.00)
Manufacturing Industry	1.125 (0.19)	0.873 (0.03)
Employer Appears at Hearing	2.027 (0.00)	0.666 (0.00)
Claimant Appears at Hearing	0.623 (0.00)	30.143 (0.00)
Employer is Represented at Hearing	1.698 (0.00)	0.642 (0.01)
Claimant is Represented at Hearing	0.872 (0.63)	2.288 (0.00)
Multiple Issues Contested	0.769 (0.00)	0.533 (0.00)
Telephone Hearing	0.711 (0.00)	0.678 (0.00)
N	3,583	8,132
Percent Correctly Classified	72.17	71.84
Model Chi Square	117 (0.00)	1906 (0.00)

NOTES: Data are based on lower authority appeals hearings from Wisconsin in 1994. A logistic regression model was used to estimate the equations. "Less Than 20 Employees" was omitted as the reference group. Significance levels are noted in parentheses.

SOURCE: ACUC calculations using data provided by Department of Industry, Labor, and Human Resources, State of Wisconsin.

firm has more than 100 employees; (2) the employer appears at the hearing; and (3) the employer was represented at the hearing. Employers are less likely to win an appeal when: (1) the claimant appears at the hearing; (2) multiple issues are contested;<sup>55</sup> and (3) the hearing is conducted by telephone.

There are two variables which were not significant in this equation—the individual employer's tax rate and whether the claimant has representation. These two results are important, indicating that individual employer tax rates do not affect the employer success rate, and that a claimant's use of representation does not significantly affect the appeal outcome when the employer files the appeal.

### *Results for Claimant Success Rate*

The model for claimants correctly predicted whether the claimant would win or lose an appeal in 72 percent of the cases and was statistically significant, as indicated by the model chi square of 1906.<sup>56</sup> These results indicate that claimants are more likely to win an appeal when: (1) the claimant appears at the hearing, (2) the claimant is represented at the hearing, and (3) the employer is taxed at a higher rate. Claimants are less likely to win an appeal when: (1) the employer has 20 or more employees, (2) the employer appears at the hearing, (3) the employer is represented at the hearing, (4) the employer is in the manufacturing industry, (5) multiple issues are contested, and (6) the hearing is conducted by telephone.

Both employers and claimants are less likely to win an appeal that they filed when there are multiple issues involved in the appeal and when the hearing is conducted by telephone instead of in-person. These factors, however, have more of a negative effect on claimants than on employers. Claimants are only about half (0.533) as likely to win an appeal when multiple issues are involved, whereas employers are just over three-fourths (0.769) as likely to win, all else being equal. This difference is smaller for telephone hearings—claimants are only 0.68 times as likely to win the appeal, while employers are 0.71 times as likely to win.

It is important to note that, in contrast to when the employer files an appeal, a claimant's use of representation affects the outcome of the appeal when the claimant is the appellant. Employer tax rates also affect the outcome of the appeal when the claimant files the appeal, but not when the employer is the appellant.

## Summary

The empirical results were better when appeal-level data from within a state were used rather than macro-level state data. Because data were available from only one state, the factors explaining employer and claimant success rates for that particular state could be described, but the results could not be generalized to other states. It would be useful to extend this analysis with data from more states. This could allow for identification of the factors affecting appeals across the nation. More detailed information for some of the variables would also help. Information on all types of representation and on the specific issue being appealed would be especially useful.

## NOTES

1. See, for example, Advisory Council on Unemployment Compensation (1995).
2. For more information on monetary eligibility, see Chapter 7 of Advisory Council on Unemployment Compensation (1995).
3. Corson *et al.* (1986) is the source of the information on how nonmonetary determinations and denials are made.
4. For more information on nonmonetary eligibility definitions, see Chapter 8 of Advisory Council on Unemployment Compensation (1995).
5. In addition, some of these factors could affect the number of individuals who apply for benefits.
6. The state UI agency may also be involved in an appeal.
7. Specific state information on filing time and hearing officers for lower and higher authority appeals was obtained from U.S. Department of Labor (1995d).
8. Referees in Hawaii, Ohio, and Tennessee have up to 30 days to reconsider a decision; in Michigan, they have up to 10 days.
9. Hawaii, Nebraska, and the Virgin Islands do not provide a second administrative appeal. Appeals of lower authority decisions in these states are taken directly to the state courts for judicial review.
10. Except in Mississippi where the board is appointed by the Employment Security Commission, and in New Jersey where the board is appointed by the Director of Employment Security.
11. Data for the analysis of trends in determinations, denials, and appeals were extracted from the Unemployment Insurance Required Reports (UIRR) database, which contains statistics provided by the states.
12. According to knowledgeable individuals in the Unemployment Insurance Service, there are problems with some data reported by Nebraska to the UIRR database.
13. An "other" category accounted for the remaining 12 percent.
14. The denial rate per initial claim is the mathematical product of the determination rate per initial claim and the denials per determination.
15. See note 12.
16. An "other" category accounted for the remaining 13 percent.

17. The states report UI appeals information monthly by filing Report 5130 in the UIRR database. Other than the number of appeals filed each month, the 5130 reports information in terms of decisions made on higher and lower authority appeals. Therefore, to remain consistent, the analysis reported here uses decisions to approximate appeals.

Between 1971 and 1994, the percentage of lower authority appeals decided ranged from 83 percent to 100 percent, and was below 93 percent in only four of those years. The percentage of higher authority appeals decided ranged from 84 percent to 100 percent, and was below 93 percent in only six of those years. Therefore, the number of decisions closely approximates the number of appeals, and is adequate to analyze trends in UI appeals.

18. The number of initial claims has increased 15 percent between 1971 and 1994.

19. In contrast to the increase in initial claims, the number of denials has remained relatively constant between 1971 and 1994 (see Table 1).

20. According to knowledgeable individuals in the Unemployment Insurance Service, there are problems with the denial rates reported by Nebraska. It is, however, possible for this ratio to exceed 100 percent because the denominator of the ratio does not include the number of weeks that UI benefits are claimed by active UI claimants (i.e., weekly claimant contacts). Therefore, exclusion of the weeks of claimant contacts from the denominator in Table 4 causes the denial rate to be overestimated. Measuring total denials as a proportion of initial claims, however, allows this ratio to be directly compared with the ratio of total appeals to initial claims.

21. The misreporting of data by Nebraska may make this figure artificially low.

22. Since the UIRR Report 5130 does not separate the "other" category by issue, changes over time in appeals decisions with respect to specific issues within this category cannot be determined.

23. The figures in this section include only lower and higher authority appeals involving claimants and employers. Appeals in which the UI agency was a party have been excluded. They represent an average of 0.1 percent of total lower authority appeals and 1 percent of higher authority appeals during the period 1971 to 1994.

24. The lower authority appeal rate is defined as the percentage of unfavorable decisions received by the claimant (employer) that the claimant (employer) appealed.

25. The success rate is defined as the percentage of lower or higher authority appeals filed by the claimant (employer) that the claimant (employer) won.

26. Both the denial rate and appeal rate are expressed as a percentage of initial claims.

27. This measure was lagged 3 years in the regression equation. The 3-year lag structure had the most statistically significant impact on the denial and appeal rates. Statistically, the lag structure reflects the notion that it takes a few years for state policy decisions prompted by the status of the trust fund balance to affect a state's law or a state's administration of the program.

28. Since refusal of suitable work is not a factor in determining initial eligibility, it was not included in the equations for separation denial rate, employer appeal rate, or employer success rate.
29. Between 1978 and 1994, 9 states imposed durational disqualifications for voluntary leaving, 12 states imposed durational disqualifications for misconduct discharges, and 15 states imposed durational disqualifications for refusing suitable work. Advisory Council on Unemployment Compensation (1995, 111).
30. For example, a state which is not adept at identifying nonmonetary eligibility violations would be paying benefits to recipients who are actually "ineligible"; this would result in low determination rates and consequently low denial rates. In contrast, a state which is very good at detecting eligibility violations would conduct a larger number of determinations which would result in a larger number of denials.
31. There are some disadvantages with the use of these two particular measures. For example, Advisory Council on Unemployment Compensation (1995) noted that the wage replacement rate (i.e., average weekly UI benefit divided by average weekly wage) is an inaccurate measure because the denominator is not available for UI recipients. See, for example, Advisory Council on Unemployment Compensation (1995, 126). Similarly, variations in the actual duration of benefits are more dependent upon the characteristics of the unemployed and the labor market in a given state and year than upon the potential duration for which a claimant is eligible to receive benefits.
32. Tabulations from the Survey of Income and Program Participation (SIPP) indicate that while 61 percent of unemployed union members receive UI benefits, only 29 percent of unemployed non-union workers receive benefits (Bassi and Chasanov, forthcoming).
33. Due to problems of data availability for a number of variables, only these 13 years were used.
34. Unlike ordinary least squares regression (OLS), the GLS model does not assume that the observations are independent of one another. Consequently, it is the preferred estimation technique for panel data, resulting in more reliable estimates of standard errors and the model's explanatory power.
35. This is presumably because more individuals are being denied benefits at an early stage in the application process.
36. This result was not expected.
37. This suggests that the variables that were available for this analysis were not able to capture adequately the reasons for variations in denial rates across states. Other variables that may explain some variation, but that could not be quantified for use in the regression analysis include the following: actual definitions of nonmonetary eligibility conditions; the ability of states to detect and investigate nonmonetary eligibility issues; and state administrative practices.

38. This result was not expected.
39. This result was not expected.
40. This result was not expected.
41. Given the effects of the other independent variables included in the analysis and relative to Pennsylvania.
42. The authors thank Advisory Council on Unemployment Compensation member Bill Grossenbacher (Administrator, Texas Employment Commission) and alternate Carol Skornicka (Secretary, Wisconsin Department of Industry, Labor, and Human Relations) for providing these data.
43. Employees may also be required to pay payroll taxes in four states. See Advisory Council on Unemployment Compensation (1995, 51) for more information.
44. In addition, the tax schedule in effect in a given state often varies based on state trust fund solvency and economic conditions.
45. See Chapter 6 of Advisory Council on Unemployment Compensation (1995) and Chapter 7 of Advisory Council on Unemployment Compensation (1996) for additional information on experience rating and a detailed discussion of the types of experience rating.
46. For example, some or all of the ultimate burden of UI taxes could be shifted from employers to workers in the form of lower wages or benefits, or to consumers in the form of higher prices.
47. Such involvement could include the following: scrutinizing former employees' UI claims, reviewing charges to their UI accounts, and participating in the appeal process.
48. When compared to other states, Texas has a higher than average rate of denial per initial claim (see Table 4). This may explain, in part, why claimants have a high success rate in Texas.
49. Much of the information provided in this section was taken from Kritzer (1995).
50. A similar analysis of the Texas data was not performed because of the lack of information on representation in the data. Also, as previously discussed, appeal and success rates in Texas are very different from the national averages of those rates. In Texas, employers comprised a large proportion of all appellants and claimants won a large percentage of all appeals.
51. A dummy variable measuring whether the firm was paying the maximum tax rate was also considered. It was not statistically significant in either the employer or the claimant regression equations. However, only 1.6 percent (183) of the hearings in this sample involved firms at the maximum tax rate, which may make conclusions about the lack of significance of

this variable inappropriate. Therefore, it was dropped from the analysis.

52. A dummy variable measuring whether both the claimant and the employer had representation in the hearing was also considered. It was not statistically significant in either the employer or claimant regression equations. However, only 0.4 percent (52) of the hearings in this sample were those in which both parties were represented, which may make conclusions about the lack of significance of this variable inappropriate. Therefore, it was dropped from the analysis.

53. The model was also estimated using OLS and probit regressions. However, the models did not correctly account for the error distribution of the data using any of the regression techniques and only the logistic regression results are presented in this paper.

54. The model was significantly better at predicting when an employer would lose an appeal than when an employer would win an appeal, however. It correctly predicted when an employer would lose an appeal in 99 percent of the cases, but it correctly predicted when an employer would win an appeal in only 4 percent of the cases. Employers in Wisconsin lose 72 percent of their appeals, and the model was able to correctly predict 72 percent of the outcomes.

55. This result was not expected.

55. The model was significantly better at predicting when a claimant would lose an appeal than when a claimant would win an appeal, however. It correctly predicted when a claimant would lose an appeal in 94 percent of the cases, but it correctly predicted when a claimant would win an appeal in only 17 percent of the cases. Claimants in Wisconsin lose 71 percent of their appeals, and the model was able to correctly predict 72 percent of the outcomes.

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Disputes Over Unemployment Insurance  
Claims: A Preliminary Analysis

by  
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## Introduction

Disputes over eligibility for benefits arise frequently in state unemployment insurance (UI) programs. This paper focuses on four areas. (1) It documents the frequency of disputes, the issues and the resources devoted to dispute resolution. (2) It describes the variation in claims disputes or controversy across states and through time in the United States. (3) It undertakes a limited comparative analysis of disputes and dispute resolution procedures in Canada. (4) It assesses the linkage between disputes over eligibility and experience rating. Because the analysis in areas (3) and (4) is admittedly exploratory, the findings include major caveats that reflect the preliminary nature of the analysis.

### I. Disputes in Unemployment Insurance

The activities undertaken in conjunction with UI benefit payments administration are often divided into four so called broadband areas: initial claims, weeks claimed, nonmonetary determinations (or nonmons) and appeals. To receive UI benefits the claimant must satisfy a number of eligibility criteria: i) sufficient base period earnings, ii) appropriate reason for unemployment (most typically an employer-initiated separation caused by inadequate labor demand), iii) being able and available for work and iv) not refusing "suitable" work. The preceding list is only indicative of the main eligibility criteria. Initial claims cover both new claims at the start of benefit years and additional claims associated with second and later spells of unemployment within previously established benefit years. Monetary eligibility is determined as a part of initial claims broadband activities which also include completing initial applications and other intake procedures. Weeks claimed broadband activities cover the routine aspects of payments administration to those in benefit status.

Nonmonetary determinations are divided into two major areas: separation from work issues (termed separation nonmons) and all

other determinations (termed nonseparation nonmons). The former address the circumstances surrounding leaving the last job which can affect claimant eligibility. The latter typically deal with issues of continuing eligibility while in benefit status and benefit payment reductions which occur when certain other income is received at the same time (either disqualifying or deductible income). The issues in dispute, both nonseparation and separation issues, are resolved by determinations made within the UI agency. Agency determinations, termed adjudications, include fact finding and the subsequent application of relevant statutes and/or administrative rules appropriate to the claimant's situation.

If the worker and the employer agree that the worker was laid off by the employer no separation issue will arise. However, issues frequently arise regarding the reason for the separation. Two common situations are the following: i) a worker alleges the separation was a layoff while the employer asserts the worker quit and ii) the employer alleges the worker was discharged for "cause" while the worker asserts it was an ordinary layoff. In both instances the worker's eligibility and/or total potential entitlement will be enhanced if the separation is judged to be an ordinary layoff. If the employer's position prevails benefits will be denied for the entire spell of unemployment or for a fixed disqualification period, say from four to twelve weeks. Also, if the employer prevails, there will not be direct financial consequences to the employer even if benefit are paid, i.e., the benefit payments will not be charged to the employer's account.

Agency rulings against claimants reduce payments but typically the reduction is larger when a separation issue is in dispute. As noted, quits and discharges for cause result in denials for the entire spell of unemployment or multi-week disqualifications. Nonseparation nonmons, in contrast, may cause benefits to be denied only for the week(s) of the act resulting in ineligibility or cause only a partial denial of the weekly benefit. Separation nonmons generally are decided before benefits are paid while nonseparation nonmons mainly affect workers already receiving benefits.

If either party to a nonmonetary determination is dissatisfied with the agency's decision there can be an appeal.<sup>1</sup> Administrative appellate proceedings resemble formal court proceedings with a presiding officer (typically an administrative law judge), the presentation of evidence, cross examination, possible formal representation of one or both parties and the issuance of a written ruling. All but two states also allow subsequent (higher level) administrative appeals of initial (lower level) appeals decisions.

In some disputes there are only two interested parties, the claimant and the UI agency, and the key issue is whether or not the claimant satisfies all the conditions of benefit eligibility. In other disputes there are three interested parties and the key issue is the reason for the job separation. Here the UI agency initially adjudicates the issue (making a separation nonmonetary determination), and remains an interested party if its initial determination is followed by an appeal.

Each year UI agencies resolve millions of disputes over benefit eligibility. For the period 1971 to 1993 new and additional initial claims for regular state UI benefits averaged 18.3 million per year while nonmons averaged 7.7 million and appeals averaged .9 million. Typically, the annual number of nonmonetary determinations exceeds one-third of the number of new and additional claims for benefits; more than one tenth of UI agency nonmonetary determinations are appealed; and more than one tenth of lower level appeals decisions are themselves appealed, Disagreements over benefit eligibility are common in UI programs.

Substantial UI administrative resources are devoted to resolving disputes over claims. This can be illustrated in two ways. First, the national office of the UI Service recently conducted a survey of state-level staffing of benefits

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<sup>1</sup> Some states initially limit the right of appeal by requiring an agency redetermination in certain specified situations. In practice, only about ten states make use of redeterminations (reconsiderations) in more than one or two percent of all nonmonetary determinations.

administration during fiscal years 1989 and 1991. In the 46 states that provided responses for both years, 32 percent of employment involved in benefits administration was devoted to nonmons and appeals in 1989 and 31 percent in 1991. In both years nonmonetary determinations accounted for somewhat more staff time than appeals.<sup>2</sup> Second, when counts of broadband workload activities are weighted by the average time needed to accomplish workload tasks (minutes per unit or MPUs), the share of benefit staffing resources devoted to nonmons and appeals has fallen into the 29-33 percent range in recent years. Weighted by their respective MPUs nonmons and appeals are of roughly equal importance.<sup>3</sup> Since about 70 percent of all UI administrative staff time involves the administration of benefit payments, issues and disputes resolved by nonmons and appeals account for 20-23 percent of all staff time devoted to UI program administration.<sup>4</sup>

Agency administrative resources used in nonmons and appeals are the largest component of UI dispute-related costs. While this paper did not try to examine all costs, other major cost categories can be identified. Claimants and employers devote time complying with requests for information needed for agency determinations. They also may incur costs of formal representation in appeals proceedings. It would be instructive to undertake a full analysis of all costs associated with disputes over UI eligibility.

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<sup>2</sup> Of UI agency staffing devoted to nonmons and appeals, nonmons accounted for 54.4 percent of the combined total in 1989 and 56.2 percent in 1991. Since lawyers are highly paid, the two activities are probably of nearly equal importance as elements of UI agency costs.

<sup>3</sup> This range of percentages is deduced using national data on workload and the average productivity in completing individual tasks. Assessing the share of staff time devoted to individual broadband administrative activities is hampered by outdated data on MPUs, the time needed to complete individual administrative tasks. The last systematic survey that timed these activities took place in 1984, a full decade ago.

<sup>4</sup> About 30 percent of UI agency staff work in tax administration.

## II. Time Series and Geographic Variation

### National Trends in Nonmonetary Determinations and Appeals

State reporting of nonmonetary determinations and appeals extends back several decades with computerized records available from the national office of the UI Service since 1971. Thus one can examine time series and geographic patterns in disputes over UI eligibility. Table 1 presents national summaries of nonmonetary determinations and appeals in annual data extending from 1965 to 1993. The table also shows new claimant spells of unemployment to provide background information on the labor market situation in these years. The right hand columns show rates of occurrences of nonmonetary determinations, denials and appeals relative to new claimant spells and nonmonetary determinations. Finally, to help summarize these data, the bottom rows show annual averages for three periods: 1965-1970, 1971-1980 and 1981-1993.

Several features of Table 1 are noteworthy. First, observe the cyclical responsiveness of new claimant spells. Between 1989 and 1991 new spells increased from 15.62 million to 21.30 million or by 36 percent. Even larger percentage increases occurred during 1969-1971 (46 percent) and 1973-1975 (92 percent). Nonmonetary determinations, denials and appeals do not exhibit such pronounced short run variability. Disagreements over eligibility for benefits are more cyclically stable than are new claims for benefits.

Second, note the unusually large volume of nonmonetary determinations during the four years 1976-1979. This was a period of economic expansion but the volume of determinations ranged from 9.43 million to 10.37 million, the highest levels observed in the table, higher than in recessions years such as 1982 and 1991. Because of the high volume of nonmons during 1976-1979, the average for the 1971-1980 decade exceeded the 1981-1993 average, 8.28 million versus 7.05 million, despite the higher volume of new spells of the latter period. On a per-spell basis the rate of nonmonetary determinations was .493 during 1971-1980 versus .377

during 1981-1993. This aspect of disputes over eligibility was more common during the 1970s than in more recent years.

Third, while the per-spell rate of nonmonetary determinations has declined since the 1970s, denials and disqualifications per determination have increased. The average for 1971-1980 was .437 per determination compared to .542 during 1981-1993. When individual years are examined the highest rate of denials and disqualifications per spell are observed during 1989-1993, all exceeding .570. The rate of denials and disqualifications per nonmonetary determination first reached .50 in 1985, and has not fallen below .50 since that year. In recent years UI agency determinations have increasingly been decided against claimants.

Fourth, and perhaps most obvious, there has been a pronounced upward trend in appeals of UI agency determinations. The absolute annual volume of appeals averaged .24 million during 1965-1970, .64 million during 1971-1980 and then 1.02 million during 1981-1993. Appeals per new claimant spell increased from .023 during 1965-70 to .055 during 1981-1993, and there was a noticeable increase in the rate of appeals in 1992 and 1993. Between 1971 and 1993 the rates of appeals per new spell and per determination roughly tripled. All measures of appeals activities in Table 1 indicate that increasingly nonmonetary determinations are questioned and contested by claimants and employers.

The data on nonmonetary determinations and appeals in Table 1 are highly aggregative. The data reporting system has more details on activities within these two broadband areas of benefits administration. The following section examines nonmonetary determinations in greater detail.

#### Nonmonetary Determinations

As noted above nonmonetary determinations are traditionally divided into two broad classes of issues, separation issues and nonseparation issues. Typically nonseparation issues account for somewhat more than half of both determinations and denials. For the entire 1965-1993 period annual denials on separation issues

averaged 1.50 million while denials on nonseparation issues averaged 1.83 million. For both types of determinations the overall denial rate has averaged somewhat more than 50 percent in recent years, e.g., .545 on separation issues and .543 on nonseparation issues during 1981-1993.

While separation nonmons account for somewhat less total workload than nonseparation nonmons, they represent a larger share of UI agency administrative staff time and costs because individual determinations typically take more time to complete. The national average MPU for separation nonmons is about 90 minutes compared to about 50 minutes for nonseparation nonmons.<sup>5</sup> Thus in terms of UI administrative staff time the breakdown is roughly 60 percent for separation nonmons and 40 percent for nonseparation nonmons.

Agency determinations on separation issues are generally made at the start of new claimant spells. Increasingly disqualifications on separation issues are outright denials that preclude the claimant from any benefits for that entire spell of unemployment.<sup>6</sup> A natural divisor for measuring the frequency of determinations and disqualifications on separation issues is the number of new claimant spells of unemployment. Traditionally the UI Service defines new spells as the sum of new initial claims (where claimants are monetarily eligible) plus additional claims (where monetary eligibility has already been established). For nonseparation issues such as ability to work and availability for work, the claimant is exposed to the risk of ineligibility during

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<sup>5</sup> The reader is reminded that the MPUs were last measured in 1984. While the analogous statistics for 1994 are not known it is still the case that separation nonmons involve substantially more time per case than nonseparation nonmons.

<sup>6</sup> A durational disqualification will continue to be effective for some interval even after the person has been reemployed. Typically states have so called requalification requirements that mandate a period of employment and/or level of earnings that must be met before the previous disqualification becomes inoperative. One may still be ineligible even if the termination is a layoff by the most recent employer.

each week when benefits are claimed. Because exposure to an eligibility determination exists during all weeks of a claim, not just at the start of a new spell, the measure of exposure to this risk covers all weeks claimed by active claimants and is termed claimant contacts. The UI Service traditionally measures the rate of denials on nonseparation issues relative to the number of claimant contacts. These measurement conventions will be followed in this section.

Table 2 displays denial-disqualification rates and determination rates on separation issues. Because the issues of voluntary quits and misconduct account for the vast majority (over 90 percent) of all separation issues, these are the only detailed issues highlighted in the table. In the first three columns of data where disqualifications are measured per new claimant spell two patterns are apparent. (1) There was an unusually high denial rate for voluntary quits during 1976-1979. (2) There is a gradual upward trend in the denial-disqualification rate for misconduct. Comparing the overall denial rates per new spell in 1965-1970 with 1981-1993, the rates are the same for voluntary quits (.055 in both periods) while for misconduct it more than doubled (.016 versus .034).

The next six columns in Table 2 provide a useful perspective on the evolution of separation denials and disqualifications since 1971. For voluntary quits, determinations per new spell have been less frequent in recent years than during the 1970s. The average rate of determinations during 1981-1993 (.076) was almost three full percentage points less than during 1971-1980 (.105). During these same years misconduct determination rates increased: .075 during 1971-1980 compared to .088 during 1981-1993. In every year since 1980 the misconduct determination rate has exceeded the determination rate for voluntary quits.

Three features of the final three columns of Table 2 are important. Denials per determination are much higher for voluntary quits than for misconduct (.729 versus .389 during 1981-1993). For both separation issues the average denial rate was somewhat higher during 1981-1993 than during 1971-1980, 4.5 percentage points

higher for voluntary quits and 2.7 percentage points higher for misconduct. However, because the mix of determinations has changed toward misconduct determinations which have lower disqualification rates, the overall denial-disqualification rate per determination on separation issues was only slightly higher in 1981-1993 than during 1971-1980, .545 versus .539. The stability of the overall denial rate on separation issues masks two distinct trends; an increased (decreased) share of misconduct (voluntary quit) determinations and small upward trends in denial-disqualification rates per determination for both issues.<sup>7</sup>

Table 3 displays national summary data on nonmonetary denials-disqualifications and determinations for nonseparation issues. The main categories of nonseparation issues are shown as well as totals. Of the detailed issues, able and available (and actively seeking work) issues are most common while refusal of suitable work issues are least common. Data showing denials for these two issues extend back to 1965 in Table 3. Starting in 1971 details for two other nonseparation issues (disqualifying and deductible income and miscellaneous nonseparation denials) become available. Categories of income that cause disqualifications and denials include workers' compensation, severance and other termination pay and pension payments. Disqualifications for receipt of pensions were broadened in April 1980 following federal legislation. Miscellaneous nonseparation issues were divided into reporting requirement issues and other issues starting in late 1979. Reporting requirements obligate certain claimants to appear in person to verify continuing eligibility or suffer an automatic denial for not reporting. Other issues apply mainly to claimants who are professional athletes, aliens and school system employees all of whom face special eligibility requirements. The Table 3 denial-disqualification rates and determination rates are shown per ten claimant contacts, i.e.,

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<sup>7</sup> Of the two series of denials per determination shown in Table 2 the trend in the misconduct denial rate is more robust than for voluntary leaving. For voluntary leaving the highest annual rates of denials per determination occurred between 1980 and 1983.

per ten weeks in active claims status.

The overall denial-disqualification rate on nonseparation issues was quite stable between 1965 and 1993. Except for the rate of .182 in 1978 all other rates per ten claimant contacts ranged from .107 to .161. The average for the 1965-1970 period was .147 compared to .145 during 1971-1980 and .133 during 1981-1993. There is a clear tendency for the overall rate to fall in recession years like 1970, 1975, 1982 and 1991.

While the overall denial rate on nonseparation issues was stable, the mix by issue changed markedly between 1965 and 1993. In 1965 able and available denials alone accounted for 77 percent of the total, while refusals of suitable work added another 7 percent. By 1993 able and available denials accounted for only 37 percent of the total and refusals added but another 2 percent. Thus over the full 1965-1993 period their combined share fell from more than 80 percent to less than 40 percent of all nonseparation denials and disqualifications.<sup>8</sup>

Denial-disqualification rates for disqualifying and deductible income issues ranged from .016 to .023 per claimant contact between 1971 and 1979 and then increased to the .026-.036 range starting in 1980. In April 1980 federal requirements became effective that increased mandatory disqualifications for pension income, and the effect is immediately obvious in data for 1980II. Note in the bottom rows of Table 3 that the average per ten claimant contacts increased from .019 during 1971-1980 to .029 during 1981-1993. The annual data also suggest a small upward trend in the denial-disqualification rate for income issues during 1981-1993.

Separate information on denials related to reporting requirements and "other" issues are available from 1980. The reporting requirements denial rate trends upward after 1980 while

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<sup>8</sup> These are the two nonseparation issues examined by Corson, et. al., in their analysis of nonmonetary determinations. See Walter Corson, Alan Hershey and Stuart Kerachsky, Nonmonetary Eligibility in State Unemployment Insurance Programs, (Kalamazoo, MI: W.E. Upjohn Institute, 1986).

the rate for "other" denials is quite stable. Reporting requirements can lead to denials for two distinct reasons, the failure to report itself or the discovery of ineligibility conditions among those who do report. Thus for reporting requirements and other nonseparation issues the precise reason for the denial is not obvious.<sup>9</sup>

What is clear from Table 3 is that the three broad categories of nonseparation issues combined (disqualifying and deductible income, reporting requirements and "other") now account for more denials and disqualifications than the able and available and refusal of suitable work issues. During the 1981-1993 period the former trio had a combined denial-disqualification rate of .072 per ten claimant contacts compared to .061 for the latter two.

Absent from both Table 2 and Table 3 is information on the severity of the denials and disqualifications. As noted earlier, denials on separation issues are increasingly durational disqualifications. Many disqualifications on nonseparation issues are only for the week of the act or condition requiring denial, but durational disqualifications can be applied for some nonseparation issues. There are no data available to show the breakdown of the denials and disqualifications by the severity of the penalties. As a general observation, however, those for nonseparation issues are less severe per disqualification because some are explicitly limited to one or two weeks while others, even if durational, take place after some weeks of benefits have already been paid. Thus, weeks disqualified per denial or disqualification are shorter for nonseparation issues than for separation issues.

The middle section of Table 3 displays determination rates for nonseparation issues, with rates again measured per ten claimant contacts. Determinations data are available only from 1971. Note that for able and available issues the determination rates are much lower after 1979 and especially after 1982. A continuing decline

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<sup>9</sup> The same observation applies to miscellaneous denials and disqualifications that were reported during the 1970s.

after 1982 is also suggested. Over these 23 years the frequency of refusal of suitable work determinations also declined with a discontinuity apparent in 1980. In this same year disqualifying and deductible income determinations increased in frequency and the frequency is even higher during 1987-1993 than during 1980-1986. In contrast, no major trends in determination rates are apparent for either reporting requirements or other nonseparation issues.

The final columns of Table 3 show denial rates per determination on nonseparation issues. The overall denial rate trended sharply upward between 1971 and 1993. It fell below .40 in every year between 1971 and 1979, but consistently exceeded .50 during 1985-1989 and then exceeded .60 during 1990-1993.

Three factors explain this upward trend. First, note that the denial rate on able and available issues increased from roughly .35 during the 1970s to .55-.60 after 1985.<sup>10</sup> Second, note that the denial rates for reporting requirements and other nonseparation issues have both trended upward since 1980. Both denial rates were generally below .50 during 1980-1984 and both have consistently exceeded .60 since 1989.<sup>11</sup> Third, the mix of determinations on nonseparation issues has changed towards issues with higher denial rates. As noted earlier, able and available issues and refusal of suitable work issues have declined in relative importance while disqualifying and deductible income, reporting requirements and other nonseparation issues have become more prevalent. The latter three generally have higher denials per determination. Thus mix

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<sup>10</sup> The trends in denials per determination and determinations per claimant contact on able and available issues are to some extent offsetting. However, the downtrend in the determination rate dominates in time series data so that denials per ten claimant contacts declined from .115 in 1965 to .048 in 1993.

<sup>11</sup> The upward trend in denial rates for these issues extends back into the 1970s. Recall that miscellaneous issues for the 1971-1979 period were later subdivided into reporting requirements and "other" issues. Denials per determination for miscellaneous issues consistently fell below .40 during the 1970s and averaged .358. Thus the increase between 1971-1980 and 1981-1993 exceeded .20.

effects and increasing probabilities of denials on given issues have both contributed to the post-1971 upward trend in denials per determination on nonseparation issues.

Geographic variation in denial-disqualification rates and determination rates are next examined in Tables 4 and 5 which focus respectively on separation and nonseparation issues. The separation issues covered in Table 4 are the same as earlier in Table 2, i.e., total, voluntary quits and discharges for misconduct. States are aggregated into the nine census divisions and averages for three multiyear periods are shown: 1965-1970, 1971-1980 and 1981-1993. Determinations per spell and denials per determination are available only for the latter two periods.

Several geographic patterns are repeated for each time period in Table 4. Denials and disqualifications per spell consistently are below-average in the Mid-Atlantic and New England divisions. This holds for voluntary leaving and misconduct denials as well as the total for all nonseparation issues. Conversely, very high denials and disqualifications per spell are consistently observed for the West North Central, West South Central and Mountain divisions. Again, high denial rates are observed for both voluntary quits and misconduct in these three divisions.

When high-to-low comparisons of denials per new unemployment spell are made across divisions, the ratios in Table 4 all exceed 2.5. The likelihood of a denial or disqualification on a separation issue clearly depends on the geographic area of the claim.<sup>12</sup> The high-to-low ratios across divisions are larger in earlier periods and higher for misconduct than for voluntary quit denials.

There are clear upward trends in misconduct denial rates in all divisions and for seven of nine the rate per new spell increases monotonically across the three time periods.<sup>13</sup> Voluntary

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<sup>12</sup> Even sharper contrasts are present in state-level data.

<sup>13</sup> The two exceptions for adjacent periods are in New England between 1971-1980 and 1981-1993 when the rate was .040 for both periods and in the West South Central division where the 1981-1993

quit denials per spell, in contrast, generally increase between 1965-1970 and 1971-1980 but then decline during 1981-1993.

When determination rates are examined the tendency for voluntary quit determination rates to be lower in 1981-1993 than in 1971-1980 is observed in most divisions. Large reductions took place in the three divisions with the highest determination rates in 1971-1980, i.e., the West North Central, West South Central and Mountain divisions. Misconduct determination rates, in contrast, were nearly stable across most divisions over these two periods with noticeable increases occurring only in the New England and Mid-Atlantic divisions.

Denials per determination also vary across divisions particularly for misconduct issues. For both detailed separation issues the averages in Table 4 show a tendency to increase between 1971-1980 and 1981-1993, but the changes are often small and some decreases also are observed. Three divisional averages are actually lower in 1981-1993 than in 1971-1980 for both voluntary quits and misconduct denials. As noted earlier in Table 2, these upward trends in denials per determination are not strong.

To summarize, determination rates on separation issues vary widely across divisions with high-to-low divisional averages exceeding 3.0 for both voluntary quits and misconduct determinations. Denials per determination exhibit a smaller range of variation, particularly for voluntary quits. Even here, however, the outcome of a typical determination on both issues is systematically different by area. The geographic aspect of variation in both determination rates and denials per determination on separation issues is considerably larger than the time series national variation examined previously in Table 2.

Table 5 shows geographic detail on nonseparation denials and determinations for the same three periods as the preceding tables.

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rate of .063 was lower than the 1971-1980 rate of .072. For all nine divisions the misconduct denial rate for 1965-1970 was much lower than for 1981-1993.

Denials and disqualifications per ten claimant contacts vary widely by division and in some instances change noticeably between adjacent periods. During 1965-1970 denial rates were unusually high in the Mid-Atlantic division and low in the East South Central division. Able and available issues account for most of the variation with the Mid-Atlantic and East South Central divisions respectively providing the high and low extremes of the range.

Overall, nonseparation denial rates increased by .04 or more during 1971-1980 in three divisions (West North Central, Mountain and Pacific) and declined by .04 in the Mid-Atlantic division. Between 1971-1980 and 1981-1993 the averages increased by .04 or more in four divisions (West North Central, East South Central, West South Central and Mountain) while decreasing by at least .04 in two divisions (Mid-Atlantic and East North Central). Sharp decreases in denial rates per ten claimant contacts on able and available issues occurred in the latter two divisions along with the Pacific division while smaller decreases occurred elsewhere. Except for refusal of suitable work issues the other detailed issues also show a wide range of interdivisional variation during 1981-1993. Clearly the divisions present a highly varied face in their denial rates on nonseparation issues. Because the detailed reporting categories changed between 1971-1980 and 1981-1993, however, the intertemporal changes cannot be traced with precision.

The determination rates per ten claimant contacts also are highly varied by census division. For the two time periods (1971-1980 and 1981-1993) the range across divisions has the top rate more than twice the level of the lowest rate. Determination rates on able and available issues decreased sharply over these periods in all divisions but the West North Central and West South Central divisions. Note also that determination rates for disqualifying and deductible income increased sharply in the New England, East South Central and Mountain divisions during 1981-1993. Again the data indicate that determination rates per ten claimant contacts differ noticeably by geographic area and that changes have occurred by area within short time periods.

Denials and disqualifications per determination increased for nonseparation issues in the aggregate, for able and available issues and for the categories that constituted miscellaneous issues during 1971-1980 and then for reporting requirements and "other" issues during 1981-1993. The national averages which had been about .35 during 1971-1980 increased to about .55 during 1981-1993. For both refusals of suitable work and disqualifying and deductible income, in contrast, denial rates were quite stable during these two periods.

For the 1981-1993 period there is a distinct regional pattern to the overall denial rates for nonseparation issues. The lowest rate is found in the Mid-Atlantic division (.302) followed by the New England and the East North Central divisions (.509 and .518 respectively). The rate ranges from .60 to .75 across the other six divisions. The detailed nonseparation issues mainly responsible for the contrasting regional pattern are able and available issues where denial rates fall into the .31-.44 range for the former three divisions but into the .61-.77 range for the other six divisions. Reporting requirements denial rates also are lowest for the former three divisions, but the contrasts with the other six divisions are less dramatic than for able and available denial rates. The final observation is that the Mid-Atlantic division has uniformly low denial rates for all the nonseparation issues covered by Table 5.

When the geographic data from both Tables 4 and 5 are considered a few conclusions emerge. (1) The Mid-Atlantic division has consistently low denial rates, either the lowest or nearly the lowest across all nine divisions, particularly during 1981-1993. The New England and East North Central divisions often rank below the national average but not by as much as the Mid-Atlantic division. Conversely, the West North Central, West South Central and Mountain divisions typically have above-average denial-disqualification rates. Thus geographic contrasts in denial rates were found for both separation and nonseparation issues.

(2) For the time periods covered in Tables 4 and 5 the denial rates by division are not stable and sometimes change sharply from

one time period to the next. (3) Not all determination rates have increased since the late 1970s. In particular, determination rates declined during 1981-1993 for voluntary quits, able and available and refusal of suitable work issues. Since refusal issues were never a large element of workload, this decline is much less important than the decline in voluntary quit and able and available issues. (4) Denials per determination for all issues either increased or remained stable between 1971-1980 and 1981-1993. For individual census divisions there are exceptions to both (3) and (4), but the exceptions are relatively infrequent.

Finally, it should again be emphasized that the severity of penalties for denials and disqualifications could not be examined with data from ETA 207 reports submitted by the states. On average, the penalties have probably increased since the early 1970s, but an analysis of their average severity was not attempted.

### Appeals

Monthly state reports on UI appeals have followed a consistent format for over thirty years. For the regular state UI programs the data cover four aspects of appeals activities: i) case management (appeals filed, disposed of and pending), ii) time lapses in appeals decisions, iii) the identity of appellants (claimants and employers) by level of appeal (higher and lower authority) and appeals outcomes and iv) lower authority appeals issues.<sup>14</sup> This section will emphasize only selected aspects of these data.

Table 6 shows national counts of appeals volume from 1965 to 1993. Three dimensions of annual appeals are emphasized: level (lower and higher),<sup>15</sup> appellant (claimants and employers) and

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<sup>14</sup> The reporting document, the ETA 5130 report, includes 73 fields of monthly data from each state. Certain fields are entered more than one time in the 5130 report. In particular, the number of lower authority appeals decisions appears in five separate fields and the monthly estimates may not all be the same.

<sup>15</sup> Hawaii and Nebraska do not have higher appeals authorities. New Hampshire added higher appeals in 1981.

caseload volume (total decisions and decisions favorable to appellants). While this section focuses mainly on rates of appeals and appellant success rates two features of Table 6 are worth noting. First, at both the lower and higher authority levels employer appeals have grown more rapidly than claimant appeals. Employer appeals accounted for 13.4 percent of the lower authority total for claimants plus employers in 1965 (29,934 of 223,957) but 25.1 percent in 1993 (250,845 of 997,532).<sup>16</sup> Over the same period the employer share of the higher authority combined total rose from 18.1 percent (6,544 of 36,128) to 32.5 percent (59,641 of 183,606). Second, the volume of higher level appeals has grown more rapidly than lower level appeals volume, increasing from 13.9 percent of the total for claimants plus employers in 1965 (36,128 of 260,085) to 15.5 percent in 1993 (183,606 of 1,181,138).

The multiyear averages shown at the bottom of Table 6 provide vivid documentation of the growth in UI appeals volume since 1965. For all decisions and decisions favorable to appellants the claimant totals more than doubled between 1965-1970 and 1971-1980 while the employer totals more than tripled. Differential growth in employer appeals is also apparent between 1971-1980 and 1981-1993. However, during the latter two periods favorable decisions for claimant appellants grew at about the same rate as favorable decisions for employer appellants.

From data previously shown in Table 1 it was clear that appeals have grown more rapidly than the overall volume of UI claims. It seems probable that the share of UI administrative staff time devoted to appeals probably has also increased since 1965.

Table 7 displays data on rates of appeals and success rates of appellants. The table shows details on the level of the appeal (higher and lower) and the appellant (claimants and employers). Rates of appeals are measured as proportions relative to adverse decisions at the preceding administrative level. Adverse decisions

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<sup>16</sup> These comparisons do not include a small number of appeals filed by others, e.g., the UI agencies-themselves.

motivating lower level claimant appeals are nonmonetary denials and disqualifications while employer lower level appeals are filed following determinations that award benefits to claimants. Adverse lower level decisions motivate higher level appeals for both parties. Appellant success rates are also measured as proportions relative to adverse decisions from the preceding stage of administration. At the lower level appellant successes are reversals of UI agency nonmonetary determinations, i.e., awards for claimant appeals of denials and denials for employer appeals of awards. At the higher appellate level adverse decisions motivating claimant appeals (the denominator of the success rate) are the sum of lower level denials of claimant appeals plus denials resulting from successful employer appeals.<sup>17</sup> For higher level employer appeals adverse decisions are the sum of lower level awards from claimant appeals plus denials from employer appeals. As in earlier tables, Table 7 also shows averages of the proportions for three periods, 1965-1970, 1971-1980 and 1981-1993.

The rates of lower level appeals have grown for both claimants and employers.<sup>18</sup> However, while the claimant rate of appeals roughly doubled between 1965-1970 and 1981-1993 (increasing from .098 to .177) the rate for employers tripled between 1971-1980 and 1981-1993 (from .021 to .062). Thus although claimants continue to file lower level appeals at a higher rate per adverse nonmonetary determination (a denial or disqualification), the ratio of the two rates of appeals declined from 5.7 during 1971-1980 (.119/.021) to 2.9 in 1981-1993 (.177/.062). A continuous increase in the rate of lower level employer appeals is also apparent during 1981-1993 with the 1992 and 1993 rates exceeding .090. Thus by 1993 the ratio of

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<sup>17</sup> Data as reported on the ETA 5130 forms do not distinguish higher appeals arising from these two lower level outcomes or their respective success rates at the higher level.

<sup>18</sup> Because nonmonetary determinations are available only since 1971 the rate of employer appeals cannot be measured before this year. In contrast, because denials are available for earlier years, rates of lower level appeals by claimants extend back to 1965.

the two rates of appeals had further decreased to 2.1 (.198/.095).

For claimants the rate of filing higher appeals has remained quite stable, between .170 and .210 in all but three years of the 1965-1993 period. The multiyear averages at the bottom of Table 7 fall into the narrow range from .190 to .193. The rate of higher level employer appeals also has increased but not as dramatically as the rate for lower level employer appeals, e.g., .090 in 1965-1970 versus .137 in 1981-1993. Thus at both levels the rates of appeals converged during the 1965-1993 period with increased rates of employer appeals responsible for closing the gap.

The success rates of UI appeals also show a number of contrasts. Claimants and employers are both more successful at the lower level than at the higher level. At each level employers are more successful than claimants. However there is also a tendency for success rates at both levels to converge. Claimant success rates are roughly stable over the full 1965-1993 period while employer success rates, especially for lower level appeals, declined. Since 1973, for example, employer success rates at the lower level have never exceeded .361 whereas between 1965 and 1973 the rates ranged from .391 to .433. Thus in 1993 the lower level success rates were .307 for claimants and .338 for employers while their respective higher level success rates were .148 and .190.

Table 8 traces the growth in lower appeals by issue for the 1965-1993 period. Misconduct appeals grew the most rapidly while refusal of suitable work and able available appeals grew hardly at all between the late 1960s and the early 1990s. Note also that voluntary quit appeals grew less rapidly than misconduct appeals and that more misconduct appeals are now heard. This growth disparity mirrors the growth pattern in nonmonetary separation determinations, i.e., misconduct determinations have grown more rapidly than voluntary quit determinations.<sup>19</sup>

More generally, appeals over separation issues have grown more rapidly than appeals over nonseparation issues. Voluntary quit and

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<sup>19</sup> Recall the Table 2 trends in determinations per new spell.

misconduct appeals combined represented 53.2 percent of all lower authority appeals in 1965 (119,300 of 224,200) but 66.5 percent in 1993 (664,100 of 997,900).

Table 9 displays rates of appeals by issue. Because the ETA 5130 reports do not distinguish claimant from employer appellants, the rates of appeals are measured relative to all nonmonetary determinations on each issue. Since nonmonetary determinations were first available in 1971, Table 9 covers only 23 years.

Rates of appeals differ systematically by issue. The highest rates consistently occur for voluntary quit and misconduct appeals. Because disqualifications on separation issues usually are durational, these issues have larger financial stakes than other issues, probably contributing to their higher rates of appeals. During 1981-1993 nearly one determination in five on these issues was appealed. Rates of appeals for the other issues during 1981-1993 were about half of these rates or lower for able and available issues. When the 1971-1980 and 1981-1993 periods are compared, all rates of appeals are higher in 1981-1993, especially for voluntary quits, misconduct and labor disputes and other issues.

Overall, the rate of lower level appeals was almost twice as high in 1981-1993 as during 1971-1980 (.124 versus .064). The aggregate rate of appeals tripled when endpoints of the 1971-1993 period are compared, e.g., .155 for 1992-1993 compared to .050 for 1971-1972. Most of the increase in the overall rate of appeals was due to higher rates for the individual issues.<sup>20</sup>

Tables 10 and 11 provide summary data on rates of appeals and appellant success rates for census divisions. When the four sets of rates of appeals by division are compared the greatest relative spreads (the ratio of the highest divisional rate to the lowest rate) are observed for lower level employer appeals. However, for the other three rates of appeals the ratio of the highest to the

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<sup>20</sup> When the 1993 rates of appeals were applied to the 1971 mix of appeals by issue the overall rate was calculated to be .164, or .009 higher than the actual rate of .155.

lowest divisional rate is always at least 1.5, and six of eleven exceed 2.0. Wide variation is observed across geographic areas.

Several patterns in the rates of appeals by census division are consistently observed during all three time periods in Table 10. Rates of lower level claimant appeals were consistently below-average in four divisions (East North Central, West North Central, Mountain and Pacific) but above-average in four other divisions (New England, Mid Atlantic, East South Central and West South Central). Lower level appeals by employers are especially infrequent in the Mid Atlantic and Pacific divisions. Very high rates of lower employer appeals are observed in several divisions with four divisions having rates above .100 during 1981-1993 (the West North Central and all three southern divisions).

Rates of higher level appeals by census division show more variation across time periods. Consistently above-average rates of claimant higher appeals are observed only in the East North Central and East South Central divisions. Consistently low rates of claimant higher appeals are observed in the New England, West North Central and Mountain divisions. Higher employer appeals also have above-average rates in the East North Central and East South Central divisions but below average rates in the New England and Mountain divisions. All of these patterns match the geographic patterns for higher level claimant appeals. It appears claimants and employers are both more likely to resort to higher level appeals in some census divisions than in others.

Appellant success rates also vary by division, but there is relatively less variation across divisions in lower level claimant success rates than in the other three success rates shown in Table 10. The high-to-low ratios for lower claimant appeals fall into the 1.3-1.45 range for the three time periods, i.e., a ratio of 1.45 for 1981-1993 is derived from the .330 success rate in the Pacific division divided by the .228 success rate in the East South Central division. For the other three types of appeals five of nine high-to-low success rate ratios by division fall into the 1.90-2.19 range with two higher and two lower ratios.

Divisional appellant success rates also show considerable variability over time. For lower level claimant appeals only the Mid Atlantic and East South Central divisions consistently have below-average success rates in Table 10 while only the Mountain and Pacific divisions have consistently above-average success rates. For lower level employer appeals one division has consistently below-average success rates (Mid Atlantic) and only one has consistently above-average rates (South Atlantic). Only the New England and South Atlantic divisions have consistently above-average success rates for higher claimant appeals.

Much greater consistency in regional success rate patterns is observed for higher level employer appeals. Four divisions are consistently above-average (the three southern divisions and the Pacific division) while the other five are below-average in two or all three periods covered by Table 10. For a given division large changes in success rates between adjacent periods are frequently observed. Thus except for higher level employer appeals, the pattern of divisional success rates is quite varied and subject to change from one time period to the next.

Table 11 displays rates of lower level appeals by issue and geographic area. Because these data do not identify the appellant the rates of appeals for each issue are shown relative to all nonmonetary determinations on that issue, as in Table 9.<sup>21</sup> The previous observations from Table 10 about interdivisional variation apply to Table 11 as well. The high-to-low ratios exceed 2.0 in eleven of twelve instances,<sup>22</sup> and six ratios exceed 3.0. Increases between 1971-1980 and 1981-1993 are observed in the rates of appeals for both voluntary quits and misconduct issues in seven of nine divisions. Exceptions are found only in the South Atlantic and

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<sup>21</sup> The rates of appeals in Table 11 are averages of corresponding claimant and employer rates shown earlier in Table 7.

<sup>22</sup> The exception is the overall rate of appeals during 1981-1993 where the ratio is 1.85, i.e., .174 from the West South Central division relative to .094 for the Mid Atlantic division.

East South Central divisions, those with the highest rates of appeals on these issues during 1971-1980. More mixed patterns of growth in rates of appeals are observed for the other three detailed issues.

To summarize the findings from Tables 6-11, seven concluding observations can be offered. (1) Appeals activities grew rapidly during the 1965-1993 period, not only the absolute volume of appeals but also appeals measured relative to decisions at the preceding levels of UI administrative determinations. (2) Employer appeals grew more rapidly than claimant appeals, although rates for both increased noticeably at the lower appellate level. (3) Rates of appeals for separation issues, especially misconduct issues, grew especially rapidly at the lower appellate level. (4) Employer success rates exceed claimant success rates at both levels of appeals. (5) At both levels employer success rates declined over the period so that the differential with claimant success rates was much smaller in the early 1990s than it had been in the late 1960s. (6) There is a wide range of variation in both appeals rates and appellant success rates across census divisions. (7) In nearly all divisions rates of lower level appeals grew between 1971-1980 and 1981-1993, particularly for separation issues.

### III. UI Dispute Resolution in Canada

Canadian procedures for resolving disputes over UI eligibility present a number of interesting contrasts with U.S. procedures. After some introductory discussion this section undertakes two main tasks. (1) It describes the institutional arrangements for resolving UI eligibility disputes in Canada. (2) It makes Canada-U.S. comparisons of caseloads and outcomes at different stages of administrative processes. Selected features of Canada's dispute resolution procedures that present particularly vivid contrasts with U.S. procedures are included in this discussion.

There are several reasons to examine UI dispute resolution in Canada. Its economy shares many features with the U.S. economy,

e.g., primary reliance on market determined prices and wide diversity in regional economies, but is more open to international trade. Its unemployment insurance (UI) program is similar in some ways, but UI benefits replace a somewhat higher fraction of prior earning, a larger proportion of the unemployed collect benefits and benefits are received for considerably longer periods, particularly in provinces with high unemployment.

Several institutional contrasts distinguish the UI programs of the two countries. The Canadian program is national in scope with a single law covering all provinces. Program administration is conducted by the Canada Employment and Immigration Commission (EIC or Commission). Although supported by payroll taxes, Canadian UI financing differs from U.S. financing in that employer contributions are levied at a flat rate, not experience rated, and employees also contribute. The absence of experience rating is of particular interest since some feel experience rating contributes to disputes over eligibility in the U.S..

An analysis of Canadian experiences is interesting for at least two additional reasons. First, a study completed in 1985 examined all major aspects of Canadian dispute resolution procedures.<sup>23</sup> This study examined both within-agency determinations (analogous to nonmonetary determinations in the U.S.) and appeals. Besides drawing upon administrative data the study interviewed three representative samples of claimants for whom there was an issue regarding UI eligibility.<sup>24</sup> It also examined the effects of formal representation on the outcomes of appeals. Second, Canada has recently restricted eligibility among job leavers through legislation enacted in 1990 and 1993. Those who leave jobs without good cause are now disqualified for the duration of their

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<sup>23</sup> Helene Boyer, "Evaluation of the UI Appeal System," Program Evaluation Branch, Employment and Immigration Canada, (December 1985). This report also cites earlier studies from the late 1970s.

<sup>24</sup> The three were i) claimants disqualified (or disentitled) by the agency, ii) claimants who appealed their disqualifications and iii) claimants who made higher level appeals

unemployment spells, similar to the job leaver disqualifications currently applied by most state UI programs in the U.S..

### A Description of the Canadian System

Issues and disputes over UI eligibility in Canada are resolved in four forums that are linked sequentially: initial EIC local office determinations, reconsiderations, hearings before the Board of Referees (lower level appeals) and hearings before Umpires (higher level appeals).<sup>25</sup> The first two sets of determinations take place within local EIC offices, but regional EIC offices must approve all reversals arising from reconsiderations. The two appeals bodies are nominally independent of the Commission but rely heavily on EIC staff in making their decisions. Caseloads at the four levels during fiscal year 1993-1994 (April 1993 to March 1994) were respectively 3.265 million, more than 277,000,<sup>26</sup> 37,000 and 3800. Of the 3.265 million applicants for benefits 1.0 million were disqualified or disentitled through Commission decisions.<sup>27</sup>

Disqualifications and disentitlements are the result of local office decisions on issues of monetary eligibility, reasons for the work separation and issues related to availability for work and ability to work. These areas of EIC local office determinations all parallel U.S. procedures for making monetary determinations and

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<sup>25</sup> For completeness, appeals of Umpire decisions to the Federal Court of Appeals also occur, and finally there may be appeals to Canada's Supreme Court. During fiscal 1993-1994, however, only 48 cases went to the Court of Appeals in all of Canada.

<sup>26</sup> The number of reconsiderations is not known with certainty since the EIC employee (agent) who made the initial eligibility determination usually also directs the reconsideration. Many disqualified and disentitled claimants contact EIC just to obtain information on the reason(s) for the adverse decision. However, in fiscal years 1989-1990 to 1993-1994 annual reconsiderations leading to partial or total reversals of initial negative determinations averaged about 320,000.

<sup>27</sup> A disqualification is a fixed length period of ineligibility while a disentitlement is for an indefinite period ending when the claimant's situation changes, e.g., is able or available for work.

nonmonetary determinations on separation and nonseparation issues. About one third of initial and renewal applications<sup>28</sup> generate an eligibility issue that results in a Commission decision to deny benefits altogether or withhold benefits for a finite period. Typically the applicant is informed in writing of an adverse decision. The notification also informs the applicant of the right to appeal the decision to the Board of Referees, the first level of appeals in Canada.

After receiving written notice of an adverse decision many claimants contact EIC for clarification or to question the basis of the decision. While the number of such follow-up contacts is not known precisely, the volume is substantial.<sup>29</sup> The EIC local office employee (agent) who made the initial decision may review the basis for the decision, either in light of new facts or because of a question about some interpretative aspect of the original decision.

As noted, a large number of internal reviews are undertaken each year. During fiscal year 1993-1994 .288 million of 1.237 million initial adverse decisions were completely rescinded or had the original penalties reduced. The vast bulk of all reversals of initial EIC decisions against claimants take place through reconsiderations. During fiscal year 1993-1994, for example, 96.3 percent of all reversals occurred at this level (277,460) and only 3.6 percent (10,567) were the result of formal appeals.

Canada's heavy reliance on internal reviews of initial decisions and the large annual volume of reversals present some problems of interpretation. Are there major ambiguities about eligibility that arise from imprecise statutory language? Are there

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<sup>28</sup> Respectively these are analogous to new initial claims and additional claims in U.S. UI programs.

<sup>29</sup> A survey of 464 disqualified/disentitled UI claimants indicated that half questioned the original decision. Typically contact is made by telephone or by an in-person visit to a local office. Only about 3 percent of inquiries are written. The Commission does not keep records on the total number of follow-up contacts from unsuccessful claimants or the number of requests for a review of the initial decision. See Chapter 2 of Boyer (1985).

wide areas of administrative discretion regarding eligibility decisions? Are nonuniform interpretations of statutory language and/or administrative guidelines made from one local office to the next? A study of local office operations would be helpful in providing answers to such questions.

Nevertheless, three points about the Canadian system for resolving disputes over eligibility are clear. (1) Many issues arise which the Commission must resolve, and disqualifications and disentitlements are imposed in more than one third of all applications. This represents a higher proportion of adverse determinations than in the U.S. where about three quarters of new initial claims are followed by first payments.<sup>30</sup> Thus eligibility issues commonly arise in Canada even though employers have a smaller direct financial interest in the results of eligibility determinations than in the U.S. where employers are experience rated. (2) Many of the initial determinations against claimants are later reversed by EIC reconsiderations. Because reconsideration procedures have not been the subject of an external evaluation by EIC, they are not as easy to describe as the appeals procedures to be discussed below. At present, reconsiderations are to some extent a black box. (3) Questions about eligibility are mostly resolved by within-EIC procedures. Appeals of eligibility determinations are much less common in Canada. For example, the number of appeals in Canada during fiscal year 1993-1994 was about 37,000 or 3.6 percent of disqualifications and disentitlements for the year. During 1993 there were 1.2 million appeals in the U.S. or 31.3 percent of all nonmonetary denials and disqualifications. To the extent that salaries of staff involved in within-agency procedures (nonmons in the U.S.) are lower than for appeals staff, e.g. hearings officers, the contrasts in administrative costs are even more favorable to Canada which relies much less heavily on appeals to resolve

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<sup>30</sup> For the 28 years from 1966 to 1993 first payments as a proportion of new initial claims ranged from .690 to .799 and averaged .748.

disputes over eligibility.

Canada utilizes an independent body, a Board of Referees, to hear lower appeals of disqualifications and disentitlements. The Board is a tripartite body with a Chair, a labor representative and a business representative. Members of the Board serve three year terms which can be renewed. They are trained by EIC as to the statutes and administrative regulations governing UI eligibility. Hearings take place at 96 locations throughout the Country with telephone hearings often used in rural areas.

The Board of Referees receives written requests for hearings which must be filed within 30 days of notification of EIC decisions. Board decisions, in turn, are to be made within 30 days.<sup>31</sup> A Board decision draws heavily upon a document termed a submission which is prepared by the EIC employee (agent) who made the original eligibility determination. The submission identifies the issue(s) under appeal, provides all pertinent background facts, and notes basis for the original decision (the UI statute, Commission regulations or previous court decisions). Prior to the hearing, copies of the submission are sent to the claimant and, if appropriate, to the employer.<sup>32</sup> The parties are also requested to supply any additional information that may be relevant.

Board of Referees procedures are intended to be informal with claimants able to represent themselves, but formal representation of claimants is permitted. Witnesses can be cross examined, but subpoenas are not permitted. Taped records of most hearings are kept. Interested parties in attendance include Commission agents, but deliberations by the Board are conducted in private. The Board usually completes its deliberations the day of the hearing, and issues written decisions that either confirm, rescind or modify the

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<sup>31</sup> There is a performance standard that 90 percent of appeals are to be heard by the Board within 30 days of receipt of notice of appeal and all appeals are to be heard within 45 days.

<sup>32</sup> The employer is considered to be an interested party when the issue is a labor dispute, a voluntary quit or a discharge for misconduct.

previous Commission decision.

Appeals to the Board are dominated by cases involving two issues, unavailability for work and voluntary leaving. In 1984-1985 each accounted for more than one fourth of all appeals. Misconduct issues accounted for less than one tenth of the total, in contrast with the U.S. where misconduct appeals have been the leading issue in lower level appeals since 1981 (as shown in Table 8) and now account for more than 35 percent of the total.

Three issues dominate in disqualifications and disentitlements by the Board: inadequate base period earnings, unavailability for work and voluntary leaving. In 1984-1985 inadequate earnings accounted for 30.6 percent of all disqualifications and disentitlements while unavailability issues added 19.6 percent and voluntary leaving added 18.4 percent. Combined, the three issues accounted for two thirds of the total.<sup>33</sup>

Appeals before the Board do not require attendance in person by the appellant. However, attendance favorably affects outcomes for claimants. When appellants were absent 79 percent of Commission decisions were upheld by the Board in 1984-1985 while only 56 percent were upheld when the claimants were not in attendance. Attendance had more favorable effects in Canada's western provinces than elsewhere.<sup>34</sup>

Representation at Board hearings also affects outcomes. Survey data indicated that appellants accompanied by a lawyer, a union representative or a member of an action group for unemployed

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<sup>33</sup> Data on issues before the Board and its decisions are not reported as systematically in Canada as in the U.S.. The percentages in the text are taken from Tables 3.3 and 3.4 of the Boyer (1985) report. Data on appeals by issue during 1984-1985 were derived from a random sample taken in the fourth calendar quarter of 1984. For the preceding two years appeals by issue were estimated based on administrative data from five provinces. The exact source of data on disqualifications and disentitlements by issue is not indicated other than "Administrative data."

<sup>34</sup> National and provincial percentages are given Table 3.6 of Boyer (1985).

workers achieved a modification the original Commission decision in 57 percent of appeals whereas those acting alone secured modifications in only 42 percent of cases.<sup>35</sup> While several UI staff believe a similar situation exists in the U.S., this question has not been formally investigated in research supported by the national office of the UI Service or by the states.

A survey of claimants who received adverse eligibility decisions from the Commission indicated that their understanding of Canada's appeals system is limited.<sup>36</sup> Only three fourths of respondents knew of their right of appeal even though the written notice of disqualification or disentitlement included this information. Many who acted on their own behalf at hearings were not aware of the possibility of formal representation and many also indicated that advice and representation would have been welcomed. Also, only about half realized the Board of Referees was formally independent of the Commission. Thus, the willingness to appeal initial EIC decisions is probably inhibited since the Board is viewed by many claimants as a part of the same agency which made the initial adverse determination.<sup>37</sup>

Appeals to the Board declined from about 3.0 percent of all EIC decisions adversely affecting claimants in the late 1970s to 1.2-1.3 percent in the mid 1980s. More recently, however, the rate of appeals has risen from 1.6 percent of adverse decisions in fiscal year 1989-1990 to 3.6 percent in 1993-1994. Appellants before the Board had success rates in the 15-20 percent range during the late 1970s and early 1980s, but this has risen in recent years. Their success rate was 19.5 percent in fiscal year 1989-1990

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<sup>35</sup> See Table 3.7 in Boyer (1985). Large provincial differences are also apparent in this table.

<sup>36</sup> See Chapter 3 of Boyer (1985).

<sup>37</sup> At least three factors contribute to the impression that the Board is part of the Commission. The Board clerks are Commission employees. Hearings are held on Commission premises. The Commission supervises the training of Board members.

but 25.4 percent in 1992-1993 and 28.6 percent in 1993-1994.

The decisions of the Board of Referees can themselves be appealed to a higher level to Umpires who specialize in UI cases. Umpires are mainly judges from the federal court system. They hear appeals of Board decisions brought by claimants, employers, their representatives and the EIC. The Commission initiates appeals when it deems the Board of Referees has misapplied the law or misinterpreted administrative procedures.<sup>38</sup> Higher appeals volume has followed a strong upward trend since the early 1970s rising from fewer than 200 cases in 1972 to 3800 in fiscal year 1993-1994. Growth in higher appeals volume has been especially rapid in the 1990s both in absolute volume and as a proportion of decisions made by the Board of Referees.<sup>39</sup>

The disputed issues in appeals to Umpires are quite varied. In 1983 administrative data from the Commission identified nine detailed issues but not one accounted for 20 percent of the total. However, in the five years from 1979 through 1983 unavailability for work, voluntary leaving, and issues related to earnings and overpayments consistently accounted for at least 10 percent of all appeals and each averaged about 15 percent of the total.<sup>40</sup> As with lower appeals, claimant attendance at Umpire hearings and having formal representation systematically result in more favorable

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<sup>38</sup> Section 80 of Canada's Unemployment Insurance Act specifies four grounds for appealing Board decisions to Umpires: i) a breach of natural justice, ii) a failure to exercise jurisdiction or excess of jurisdiction, iii) an error of law or iv) erroneous findings of fact made in a perverse or capricious manner or without regard to materials before the Board. Natural justice refers the appropriate application of relevant statutes and legal precedents.

<sup>39</sup> Between fiscal years 1989 -1990 and 1993-1994 the absolute numbers of higher level appeals increased from 1738 to 3811. As a proportion of Board decisions the growth was from .080 to .103. The comparable rate was only .056 in 1980-1981.

<sup>40</sup> See Table 4.2 in Boyer (1985). Comparable data on higher appeals are not collected in ETA 5130 reports.

outcomes for claimants.<sup>41</sup>

In recent years the volume of appeals to Umpires has greatly exceeded the volume of Umpire decisions, creating a large backlog of cases. At the end of 1993-1994 the backlog stood at 7,434 representing more than four years of cases at recent rates of decisionmaking.<sup>42</sup> Unlike appeals to the Board of Referees there are no timeliness performance standards for appeals to Umpires. This backlog represents a major challenge to Canada's UI program.

The Commission itself has increasingly filed higher level appeals since claimants rights of appeal were broadened in 1980. In 1981 Commission appeals accounted for 2.8 percent of all appeals to Umpires, but by 1993-1994 this had grown to 16.2 percent. Discussions with Commission staff indicated some Board of Referees decisions did not follow UI statutes, administrative regulations or court decisions affecting eligibility. Thus Commission appeals to Umpires were filed to overturn Board decisions.

Commission representatives felt the volume of these appeals could be reduced. Two helpful changes would be to institute more extensive training of Board members and having EIC staff expertise available on call during Board deliberations to answer technical questions about applicable UI statutes, administrative regulations and court precedents.

Following a decade of comparative stability in lower level appeals with annual caseloads ranging from 15,000 to 19,000, the 1990s have witnessed a large growth in both lower and higher level appeals. Legislation affecting eligibility for job leavers has undoubtedly contributed to the growth in appeals caseloads. For those who quit without good cause, 1990 legislation increased the range of the disqualification penalty from 1-6 weeks to 7-12 weeks.

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<sup>41</sup> See Table 4.7 in Boyer (1985).

<sup>42</sup> During the four consecutive fiscal years from 1990-1991 through 1993-1994 the total number of umpire decisions (excluding cases returned to the Board and cases adjourned) was about 6500. This backlog problem has existed for more than a decade.

Legislation of mid-1993 further lengthened the penalty to a durational disqualification and imposed a requirement of 12 to 20 weeks of subsequent employment before eligibility is regained.<sup>43</sup> Commission staff as well as claimants did not fully understand the new penalties that were applicable, contributing to appeals caseload growth.

The recent growth in appeals volume affected the timeliness of Board of Referees decisions. The overall timeliness percentage dropped from 85.7 percent in fiscal year 1989-1990 to a low of 66.4 percent in 1991-1992 but then recovered to 85.1 percent in 1993-1994. As noted above, caseload growth has added to the increased backlog of unresolved appeals to Umpires.

Many policy makers in Canada would like to reduce appeals caseloads. Three possible changes are currently under active consideration. (1) When there is new or amended information relevant to an eligibility decision before the Commission, give it the right to revise its initial decision and authorize paying benefits before permitting a formal appeal to be filed. (2) Closely related is a proposal to institute a "seek leave to appeal" requirement that empowers the Commission to restrict an unlimited right of appeal. While this would restrict appellant rights it can be supported as a way to limit frivolous appeals. (3) Ensure closer coordination between the Board of Referees and the Commission when the Board is deliberating. If one or more of the Board members wanted clarification of a question regarding the UI statute, a regulation or court precedent, have the deliberations open to expert advice from Commission staff. While the third suggested change would lessen the independence of the Board from the Commission, it would reduce the need for EIC appeals to Umpires. These three changes would reduce the volume of appeals.

Other changes in Canada's system of UI appeals can be identified. A timeliness standard is needed for adjudicating

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<sup>43</sup> The two pieces of legislation are commonly referred to as C21 and C113 respectively.

appeals brought before Umpires. It also seems obvious that more umpires are needed to increase Canada's capacity to hear upper level appeals. Despite having a single national statute governing the UI program, there is substantial interprovincial variation in rates of lower and higher level appeals, access to formal representation, attendance at hearings and appellant success rates. Understanding why such variation exists is important for assurance that uniform methods of administration are in fact consistently followed throughout Canada.

The UI dispute resolution system in Canada is not presently a system in equilibrium that is fully successful in addressing the issues of claimant eligibility. However, compared to the U.S., certain obvious contrasts are apparent. (1) The volume of appeals is substantially lower. (2) The use of reconsiderations is the major avenue for changing initial EIC decisions on claimant eligibility. (3) Employer appeals on misconduct and other issues are much less frequent. (4) The large and growing backlog of unresolved higher level appeals represents a major problem. (5) Finally, due to prior research, the Canadian UI appeals system can be described more easily and its strengths and weaknesses can be identified more easily than its U.S. counterpart.

#### A Quantitative Comparison of the U.S. and Canadian Systems

Reference to quantitative data may help in highlighting the contrasts between the Canadian and U.S. systems for resolving disputes over UI eligibility. Table 12 presents data for 1993 that summarize national labor market indicators, within-agency administrative activities, lower authority appeals and higher authority appeals. The U.S. labor force is roughly nine times the size of Canada's, but because of Canada's higher unemployment rate (11.2 percent versus 6.8 percent) total unemployment in the U.S. (the weekly average) was only 5.6 times Canadian unemployment in 1993. The U.S./Canada ratio of (estimated) new unemployment spells was higher at 8.6 to 1 implying average duration per spell was

about 50 percent higher in Canada (18.5 weeks versus 12.0 weeks).<sup>44</sup>

During 1993 new and additional claims for UI benefits totaled 17.429 million in the U.S. versus 3.265 million in Canada. Their ratio of 5.3 roughly matches the ratio of initial benefit denials for monetary and nonmonetary reasons combined (5.581 million relative to 1.237 million or a ratio of 4.5).<sup>45</sup>

The first major contrast in UI dispute resolution procedures is found in rates of utilization of reconsiderations and redeterminations. These within-agency procedures are internal reviews of initial determinations that are conducted before appeals are filed. The U.S. reporting system that tracks nonmonetary determinations also records the number of redeterminations.<sup>46</sup> There were .255 million redeterminations in 1993 of which .169 million were awards and .086 million were denials. Thus redeterminations represented only 4.0 percent of total nonmonetary determinations, 6.8 percent of nonmonetary denials and 4.6 percent of all (monetary plus nonmonetary) denials of initial claims.

Because these reviews of initial determinations are brought by employers as well as claimants, the net effect of redeterminations

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<sup>44</sup> Average duration for each country was estimated as 52 times total unemployment divided by the estimated number of new unemployment spells. The application rate for UI benefits is also considerably higher in Canada than in the U.S.. The implied 1993 application rate was .74 in Canada (3.265 million/4.392 million) but only .46 in the U.S. (17.429 million/37.920 million).

<sup>45</sup> The U.S. total of 5.581 million includes 1.811 million denials on monetary issues and 3.770 million denials on nonmonetary issues. Comparing aggregate denials with a ratio suggests that all denial penalties in the two countries are of equal importance when this is clearly not the case. Monetary denials and nonmonetary denials on separation issues are nearly all durational whereas nonmonetary nonseparation denials are usually for shorter periods. Issues of the mix of durational versus shorter penalties within and between Canada and the U.S. are not addressed here.

<sup>46</sup> There are four conditions for counting a redetermination in ETA 207 reports: i) there is a protest by an interested party or the UI agency based on new information; ii) all pertinent records are reexamined; iii) a written determination is made and is sent to the claimant; and iv) there is an opportunity for rebuttal.

in changing total initial denials is even smaller than suggested by the caseload. In 1993 their net effect reduced initial denials by .083 million or 1.5 percent of all initial denials. Thus after accounting for the net increase awards from redeterminations, total net denials in the U.S. totaled 5.498 million. The low volume of redeterminations and the fact that claimants are denied in about one third of such cases combine to yield the modest effect of these within-agency administrative procedures in the U.S..

While small in aggregate numbers, the use of redeterminations and the pattern of outcomes are both highly varied across states. The ten states with the most redeterminations accounted for 89 percent of the national total in 1993.<sup>47</sup> In the five largest states (California, Florida, New York, Pennsylvania and Texas) redeterminations are not frequently used, accounting for less than 2.0 percent of 1993 nonmonetary determinations in each state. In three states with high redetermination caseloads (Missouri, New Jersey and Ohio) more than 90 percent were decided in favor of claimants in 1993 while in two other high volume jurisdictions (Illinois and Michigan) more than 60 percent are decided against claimants. The interstate contrasts in the utilization and outcomes of redeterminations have not been investigated systematically.

Reconsiderations in Canada are initiated by claimants and frequently result in the complete removal of a penalty (termed a rescission) or a reduction in the penalty (termed a termination) from an initial Commission eligibility determination. While the total number of reconsiderations is not subject to systematic measurement,<sup>48</sup> .277 million rescissions and terminations resulted

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<sup>47</sup> In many areas of UI administrative activities the ten states with largest caseload volume for that activity typically account for about half of the national total. Thus redeterminations are highly concentrated within a small number of states.

<sup>48</sup> Reconsiderations are conducted within local EIC offices. They are not systematically counted when there is no change in the initial decision. In fact, distinguishing a reconsideration from information dissemination to a disappointed claimant at this level is not easy. When a local agent recommends that the original

from reconsiderations during fiscal year 1993-1994. The U.S./Canada ratio for such within-agency decisions favoring claimants was .3. Reconsiderations reduced total disqualifications and disentitlements in Canada from 1.237 million to 1.028 million.<sup>49</sup>

Thus the U.S./Canada ratio of total intake volume was 5.3, the ratio of initial decisions against claimants was 4.5, but the total net ratio of adverse decisions against claimants was 5.3. Reconsiderations and redeterminations operate much more to the advantage of claimants in Canada than in the U.S..

Filing lower level appeals is much more common in the U.S. than in Canada. Lower appeals represented .181 of total net UI agency denials and disqualifications in the U.S. during 1993 but only .036 of similar decisions in Canada. Consequently the U.S./Canada ratio, of such appeals in 1993 was 27.0. Since appellants experienced similar success rates in the two countries, the ratio of favorable decisions (29.8) was similar to the caseload ratio (27.0). However, because successful employer appeals in the U.S. reverse awards to claimants the U.S./Canada ratio of net appeals decisions favorable to claimants was much lower at 13.7.

The contrast in net claimant successes between lower level appeals and redeterminations/reconsiderations across the two countries is vivid. In the U.S. net lower authority appeals decisions for claimants in 1993 (145,000) exceeded net awards from redeterminations (83,000). In Canada the totals were 10,600 from lower authority appeals and 277,000 from reconsiderations.

For higher appeals, the 1993 U.S./Canada ratio of cases filed was higher than for lower appeals (48.0) and even higher for higher appeals decisions (116.1). These contrasts partially reflect higher rates of filing higher appeals, .183 of lower appeals in the U.S. versus .103 in Canada. In 1993 Canadian higher appeals filings

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penalty be modified in the claimant's favor, the reconsideration is reviewed (and counted) in the regional EIC office.

<sup>49</sup> The 1.028 million total includes 68,577 terminations that reduced (but did not fully eliminate) initial EIC penalties.

represented about 2 percent of U.S. filings, but Canadian decisions totaled less than 1 percent of U.S. decisions and the backlog of undecided cases grew by more than 2000 in Canada.

Appellants prevailed in 30,000 of the 185,000 higher appeals cases decided in the U.S. during 1993 for a success rate of .162. However successful claimant appeals only exceeded successful employer appeals by 7,000. Of the 1,595 Umpire appeals decided in Canada, 911 upheld an initial Commission penalty and only 684 were a rescission or termination. Thus higher appeals yielded a net decrease of 227 in awards to claimants. The small Canadian caseload at this level further illustrates the trivial importance of appeals in resolving disputes over UI eligibility in Canada.

One main conclusion should be drawn from the preceding comparisons. Canada is much more successful than the U.S. in resolving UI eligibility disputes before they reach the stage of a formal appeal. A probable advantage of the Canadian system is the lower level of resources needed to resolve eligibility disputes since they are settled primarily through within-agency procedures and not by appeals. Cost comparisons were not undertaken in this paper. Some of the contrast between the two systems for resolving disputes over eligibility may arise from the smaller role played by Canadian employers as an interested party.

#### IV. Regression Analysis of Disputes Over UI Claims

Disputes over eligibility for UI benefits are resolved through within-agency procedures (monetary and nonmonetary determinations and redeterminations) and formal appeals. Because claimants and employers supply information needed by UI agencies to make appropriate decisions, eligibility determinations can be described as having three interested parties.

The role of U.S. employers in eligibility determinations is unusual in two ways. (1) Because their UI taxes are experience rated, employer financial interest in eligibility determinations is higher in the U.S. than elsewhere. If a determination favors the

claimant the associated benefit payouts often lead to higher future UI taxes. This direct financial consequence of benefit awards undoubtedly is a factor motivating employer participation in nonmonetary determinations and appeals. To the extent such motivation exists it is probably stronger in states where experience rating is followed to a greater degree, i.e., where the effect of a given change in benefit payments, say 1.0 million dollars, on employer UI taxes is larger. (2) Because many statutory provisions and administrative procedures affecting eligibility are determined by the individual states, employers have an opportunity to influence UI eligibility through their effects on state-level legislation. Both channels could increase the likelihood of employer opposition to claims and result in an increased likelihood of disputes over eligibility.

While this section does not try to develop a formal model of UI eligibility disputes, a few points should be noted. First, if a state institutes restrictive statutes affecting eligibility it may raise rates of disputes in the short run but have little or no effect in the long run after claimants understand the statute and its method of administration. Second, restricting eligibility through legislation may lead to fewer employer-initiated disputes over eligibility, but have an ambiguous effect on total disputes because of claimant-initiated disputes. Third, more claimant-initiated disputes may arise in states where unions are stronger. Fourth, the volume of disputes initiated at one level of UI administrative process (say, separation nonmons) can affect caseload volume in subsequent administrative processes (say, lower authority appeals). Adequate modelling of disputes probably should employ a recursive framework.

Previous literature on UI eligibility disputes is extremely limited. The book by Corson, Hershey and Kerachsky examined nonmonetary determinations, but most of their analysis focused on interstate differences in agency processes for making nonmonetary

determinations.<sup>50</sup> A major finding of their quantitative analysis was that interstate variation in denials per new claimant spell is mainly caused by differences in determination rates (determinations per new claimant spell) and much less by variation in denials per determination. The data period for their regression analysis ended in 1981. No important literature on UI appeals was encountered in preparing the present paper.

This section uses state-level data to examine three arenas for resolving controversies over UI benefit eligibility. Decisions affecting eligibility are made through nonmonetary determinations, lower authority appeals and higher authority appeals.<sup>51</sup> The analysis focuses on frequencies of eligibility disputes where frequencies are measured relative to initial intake or decisions made in later stages of administrative procedures. It does not try to explain the frequency of denials from within-agency procedures or from appeals.

Employer-initiated activities are given particular attention. To the extent there are financial motivations for employer-initiated actions, these motivations will be stronger when experience rating is followed to a greater extent. The analysis makes use of state-level estimates of the Experience Rating Index (ERI) as collected from the states by the national office of the UI Service. These estimates extend back to 1988.

The ERI is a proportion that is derived by subtracting from total benefit payouts in a given year three types of charges not levied against active employer accounts in that year and dividing

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<sup>50</sup> See Corson, Hershey and Kerachsky (1986), op. cit..

<sup>51</sup> Redeterminations are not included in the analysis because of their small overall importance. Monetary eligibility determinations are not examined because UI agency decisions are more routinized than for nonmonetary determinations which cover several possible reasons for denials and require more judgements to be made by UI administrative staff. Monetary determinations involve comparing past earnings by quarter with earnings requirements for the base period, high quarter and possibly other statutory requirements.

the difference by total benefit payouts. The three (noncharges, ineffective charges and charges against inactive accounts)<sup>52</sup> often account for one-third or more of all benefit payments. By construction the ERI is a proportion bounded between 0 and 1.0 with higher proportions indicative of a higher degree of experience rating. The ERI is a static measure, i.e., connections across years are not recognized, even though in actual operation experience rating connects current benefit payments and/or trust fund balances to future UI taxes. At best, the ERI is only an approximation to the intertemporal concept of experience rating.

The ERI varies considerably from one state to the next. For example, across all states during the six years 1988 to 1993 the national average was .62. For individual states, ten had six-year average ERIs below .55 while nine had averages of at least .70.<sup>53</sup>

Proportional occurrences of disputes over eligibility were measured for nonmonetary determinations, lower appeals and higher appeals. Altogether six different rates of occurrences were examined with new claimant spells as the normalizing variable for measuring both nonmonetary determinations and lower authority appeals. For nonmons, the determination rates on all issues and separation issues were both measured. For lower and higher authority appeals, total appeals and employer appeals were measured. Employer appeals at each level were measured relative to adverse decisions at the previous level, e.g., lower authority appeals as a proportion of nonmonetary awards and higher authority

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<sup>52</sup> By statutory intent noncharges are not to be charged to individual employer accounts as the employer was not responsible for the separation. Ineffective charges are assigned to employers but cannot be collected, either because the employer is already taxed at the maximum rate (in benefit ratio states) or has a negative balance that is less than the lowest negative balance for which charges continue to be assigned. Inactive accounts no longer pay taxes, usually because the business has ceased all operations in the state.

<sup>53</sup> The individual state-year observations appear in Attachment 1 of U.S. Department of Labor, "Unemployment Insurance Program Letter 40-94," (August 16, 1994).

appeals as a proportion of lower authority awards. Tests were conducted for the differential effects of nonmonetary determinations on separation issues as opposed to all issues.

All of rates of disputes over claims displayed a high degree of variation. Total lower authority appeals as a proportion of new claimant spells, for example, had six year averages that ranged from .017 in Idaho to .141 in Colorado and averaged .059. Coefficients of variation for individual state-year data points ranged from .379 to .874 across the six series.

Table 13 displays a set of eight regression results. The structure of the analysis is recursive, i.e., the effects of disputes from an earlier stage of administrative process on the subsequent stage is estimated. Weighted data are used (1990 taxable covered employment as weights) to prevent small states from having an undue influence on the results. Each specification also included fixed effects for individual years.<sup>54</sup>

Three aspects of the regression results are noteworthy. First, there is strong evidence supporting a recursive structure for modeling UI disputes. All six recursive arguments (explanatory variables) have positive coefficients and all are significant at the .01 level.<sup>55</sup> Interstate variation in lower level appeals is highly dependent interstate differences in rates of nonmonetary determinations (equations (3) through (6)). Three of the four nonmonetary determination variables have coefficients with t ratios that exceed 15.0. Interstate variation in higher appeals is strongly linked to rates of filing lower level appeals (per nonmonetary determination or award).

Second, nonmonetary determinations on separation issues have larger effects on lower authority appeals than other nonmons. Note

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<sup>54</sup> Because the omitted year was 1993 the constant terms are intercepts for 1993. Typically two or three of the individual year dummies were significant.

<sup>55</sup> Under a one sided t test at the .01 level the critical value of tabular t is 2.34 whereas the smallest t ratio exceeds 4.0.

the relative sizes of coefficients and t ratios in comparing equations (3) and (4) and equations (5) and (6). The contrast between equations (5) and (6) is particularly striking. Separation nonmons are more powerful than nonmons across all issues in explaining interstate variation in lower appeals.<sup>56</sup>

Third, each regression tested for effects of the ERI on rates of disputes, but the results were mixed. Higher levels of the ERI are presumed to imply larger adverse financial consequences for employers arising from awards to claimants. Thus a positive coefficient for the ERI was anticipated in each regression, but particularly in regressions where employer appeals are the dependent variable. Only three of eight ERI slope coefficients have the expected positive signs, but two of the three are in regressions explaining employer appeals. The positive ERI coefficients in equations (6), (7) and (8) are significant at the .05 level. Better results were expected for the ERI in explaining employer appeals and some support was found in these equations.

Not expected, however, are negative and significant coefficients in the two regressions explaining nonmonetary determination rates, equations (1) and (2). Note in equations (1) and (2) that the ERI is the only explanatory variable. Thus there is a risk of spurious correlation effecting the estimated slopes. A richer specification might alter the size, sign and significance of the ERI coefficients in these equations.

Overall, even considering the equations where the ERI enters significantly, its effects appear to be quite modest. The average value of the ERI by state ranged from .45 in North Carolina to .84 in Indiana. As a consequence, its maximum state-level effect in regression (7) where the ERI coefficient is .086 is only .035 (.086 times the ERI's range of .39) whereas the dependent variable (total higher appeals as a proportion of lower appeals) has a range of

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<sup>56</sup> This result is fully consistent with the data presented earlier in Table 9 where the two separation issues (voluntary quits and misconduct) have higher rates of appeals than the other issues.

.193, i.e., state-level averages from .075 to .268. Total lower appeals per nonmonetary determination has a larger and more significant effect on the rate of higher appeals in equation (7).

The results presented in Table 13 are preliminary, and additional work is warranted. Among the areas needing added attention are i) the careful development of the specifications for each dependent variable, ii) formulation of variables representing employee motivations and willingness to contest eligibility decisions and iii) a more careful derivation of variables representing employer financial stakes in awards to claimants. It is also possible that some states are more prone to disputes than others, and that disputes over UI claims are strongly influenced by such factors in state-level environments.

Even after listing the preceding limitations of the analysis, the generally weak performance of the ERI in explaining disputes is somewhat surprising. This led to some additional analysis of the ERI itself. The years 1988 to 1993 are interesting in that a recession dominates the last half of the period, and several states experienced sizeable drawdowns in their UI trust fund balances. Two elements of the ERI, ineffective charges and uncollectible charges, would be expected to grow more than proportionately in recessionary periods as more individual employer account balances decline sharply and as bankruptcy is more prevalent.

The supplementary analysis examined the relationship between the size of each state's UI trust fund balance and the ERI for that state. One would generally expect that higher trust fund balances (as proxied by state reserve ratio multiples or RRM<sup>57</sup>) would be associated with higher ERIs. When tested in regressions, however, the RRM showed only a small association with the ERI. The specifications used the average of the start-of-year and end-of-year RRM<sup>57</sup> to gauge each state's trust fund reserve position.

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<sup>57</sup> Intuitively the reserve ratio multiple (RRM) shows how many years of benefits are implied by the state's trust fund reserve if drawdowns were to occur at their historically highest rates. A RRM of 1.0 means the trust fund has twelve months of reserves.

Two analyses were undertaken. In each the ERI was the dependent variable and the average RRM was the independent variable. First, annual and pooled relationships across states were fitted for the 1988-1993 period. In all individual year and pooled relationships the coefficient for the RRM was consistently insignificant. Second, time series relationships were fitted for individual states using the six (or fewer) available observations. For the fifty regressions, 35 yielded positive coefficients for the RRM while fifteen coefficients were negative. The slopes were usually insignificant. When tested at the .05 level under one sided tests only eleven of the positive coefficients were significant and three negative coefficients were significant.<sup>58</sup> Thus the expected positive association between the RRM and ERI held for 35 of 50 states, but the fits were not as good as one might have expected.

Since at present there is no generally available alternative to the ERI for measuring the degree of experience rating in individual states, the preceding results are disappointing. To this author they suggest the need for more conceptual work on what is meant by the "degree" of experience rating and a review of how states are currently reporting data used to calculate the ERI. Only after there is a clear understanding of how to characterize the financial incentives facing employers could an analysis of disputes over UI claims hope to clearly isolate the role of experience rating in motivating employers to dispute UI claims.

To summarize the analysis of this section, five concluding comments can be offered. (1) A recursive structure for examining disputes at different levels of UI administrative processes seems appropriate. (2) Nonmonetary determinations on separation issues are much more likely to lead to appeals than determinations over nonseparation issues. (3) No strong evidence of the effects of financial incentives for employers to contest claims was found in the regression analysis. (4) More work at the theoretical and

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<sup>58</sup> A one sided test at the .05 level requires a t ratio of 2.132 to be significant.

measurement levels is needed to better characterize the factors that lead to disputes over UI claims. (5) It is especially important to further delineate what is meant by the intuitive phrase, the "degree" of experience rating. Here too, additional theoretical and empirical analysis are both needed.

## V. Conclusions

This paper has examined several aspects of disputes over UI eligibility. Given the paper's length, this section will highlight only a few findings. The reader is reminded that summaries have already been given at the ends of the major subsections.<sup>59</sup> Six areas will be emphasized here.

(1) For the two broad categories of dispute resolution procedures (nonmons and appeals) the macro trends over the past 30 years have been quite distinct. Levels and rates of nonmonetary determinations were actually higher in the mid to late 1970s than during the 1980s and the early 1990s. In contrast, appeals volume has increased more continuously throughout the 1965-1993 period.

(2) For both nonmons and appeals, misconduct issues have become increasingly important. Also, employer appeals (both lower and higher) have grown more rapidly in volume than claimant appeals. Both trends are indicators that employers have become more proactively involved in the outcomes of UI administrative processes over the past 30 years.

(3) All measures of nonmonetary determinations and appeals show vivid contrasts by geographic area. While the tables of this paper emphasized contrasts across census divisions, even sharper contrasts would have been demonstrated with a state-level analysis. High-to-low ratios across census divisions almost always exceeded

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<sup>59</sup> In particular, summaries have been given for earlier sections of the paper: national trends (pages 5 and 6), nonmonetary determinations (pages 16 and 17), appeals (page 24), Canada-U.S. contrasts (page 35) and regression analysis of rates of disputes (pages 46 and 47).

1.5 and most exceeded 2.0. Understanding the reasons for the sharp geographic contrasts should be a topic for additional analysis.

(4) Probably the most useful result of the Canada-U.S. comparisons was to document the high reliance of the Canadian system on reconsiderations as a first line for resolving questions and disputes related to initial eligibility determinations. Claimants (and employers) in the U.S., in contrast, almost always go immediately to lower appeals. While no Canada-U.S. cost comparisons were attempted, Canada's greater reliance on within-agency procedures at a minimum deserves closer examination for possible increased use in the U.S..

(5) The regression analysis generated a few interesting findings. Use of a recursive structure seemed to produce sensible results for explaining rates of lower and higher appeals. Decisions on separation issues seem to be most problematical, leading to appeals more often than other types of initial nonmonetary determinations. Perhaps most surprising, results using the Experience Rating Index (ERI) as a measure of costs of awards to employers were mixed. Some ERI coefficients were negative, but even when positive and significant their size suggested small effects.

(6) It seems clear that more research is needed on several topics related to disputes over UI eligibility. Theoretical and empirical work is needed in the areas identified at the end of section IV. Since the Canada-U.S. comparisons seemed instructive, studying dispute resolution procedures in other foreign UI systems might also yield useful insights. Finally, a study is needed of the effects of formal representation on lower and higher appeals decisions.

T- Aggregate Measures of Disputes over Unemployment Insurance Eligibility , 1965 to 1993

Year	New Claimant Spells	Non-monetary Determinations	Non-monetary Denials	All Appeals	Occurrences per New Spell:			Occurrences per Determination:	
					NonMon Determinations	NonMon Denials	All Appeals	NonMon Denials	All Appeals
1965	11.05	NA	1.94	0.26	NA	0.175	0.024	NA	NA
1966	9.74	NA	1.65	0.23	NA	0.170	0.024	NA	NA
1967	10.90	NA	1.81	0.24	NA	0.166	0.022	NA	NA
1968	9.68	NA	1.68	0.23	NA	0.173	0.024	NA	NA
1969	9.58	NA	1.64	0.22	NA	0.172	0.023	NA	NA
1970	14.28	NA	2.26	0.27	NA	0.158	0.019	NA	NA
1971	13.95	5.93	2.55	0.33	0.425	0.183	0.024	0.430	0.056
1972	12.23	5.92	2.55	0.36	0.484	0.208	0.029	0.430	0.060
1973	11.58	5.83	2.54	0.39	0.503	0.220	0.033	0.437	0.066
1974	17.24	6.91	3.06	0.45	0.401	0.178	0.026	0.444	0.066
1975	22.29	9.07	4.02	0.63	0.407	0.180	0.028	0.443	0.070
1976	17.38	9.43	4.10	0.76	0.543	0.236	0.044	0.434	0.081
1977	17.01	9.93	4.24	0.81	0.584	0.249	0.048	0.427	0.082
1978	16.09	10.37	4.36	0.82	0.644	0.271	0.051	0.420	0.079
1979	18.44	9.56	4.18	0.88	0.518	0.226	0.047	0.437	0.092
1980	23.55	9.83	4.62	0.97	0.417	0.196	0.041	0.471	0.099
1981	22.00	8.78	4.24	1.02	0.399	0.193	0.046	0.483	0.116
1982	27.94	8.73	4.33	1.07	0.313	0.155	0.038	0.496	0.122
1983	20.40	7.61	3.69	1.09	0.373	0.181	0.053	0.485	0.143
1984	17.69	6.73	3.29	0.95	0.380	0.186	0.054	0.490	0.142
1985	18.86	6.81	3.50	0.94	0.361	0.186	0.050	0.514	0.138
1986	18.06	6.82	3.71	0.96	0.378	0.205	0.053	0.543	0.141
1987	15.43	6.34	3.51	0.94	0.411	0.227	0.061	0.553	0.149
1988	14.62	6.10	3.38	0.87	0.417	0.231	0.060	0.554	0.143
1989	15.62	6.14	3.51	0.87	0.393	0.225	0.056	0.571	0.142
1990	18.54	6.58	3.87	0.95	0.355	0.208	0.051	0.587	0.145
1991	21.30	7.47	4.41	1.10	0.351	0.207	0.052	0.590	0.148
1992	19.17	7.13	4.18	1.27	0.372	0.218	0.066	0.586	0.179
1993	15.89	6.42	3.77	1.18	0.404	0.237	0.074	0.587	0.184
Avg									
1965-70	10.87	NA	1.83	0.24	NA	0.169	0.023	NA	NA
1971-80	16.98	8.28	3.62	0.64	0.493	0.215	0.037	0.437	0.075
1981-93	18.89	7.05	3.80	1.02	0.377	0.205	0.055	0.542	0.145

Source: Based on data reported by states to the UI Service of the U.S. Department of Labor. New claimant spells, determinations, denials and appeals all measured in millions. Denials refer both to denials for the duration of a spell and fixed length disqualifications. The data in this table and in all subsequent tables are for the fifty states plus the District of Columbia.

Table 2. Denial Rates and Determination Rates on Separation Issues, 1965 to 1993.

Year	Denials Per New Spell:			Determinations per Spell:			Denials per Determination:		
	Tot Sep	Vol Quit	Misconduct	Tot Sep	Vol Quit	Misconduct	Tot Sep	Vol Quit	Misconduct
1965	0.075	0.056	0.017	NA	NA	NA	NA	NA	NA
1966	0.071	0.054	0.015	NA	NA	NA	NA	NA	NA
1967	0.072	0.054	0.016	NA	NA	NA	NA	NA	NA
1968	0.075	0.056	0.017	NA	NA	NA	NA	NA	NA
1969	0.075	0.057	0.016	NA	NA	NA	NA	NA	NA
1970	0.072	0.054	0.017	NA	NA	NA	NA	NA	NA
1971	0.082	0.061	0.020	0.162	0.095	0.058	0.509	0.640	0.342
1972	0.099	0.074	0.022	0.186	0.111	0.065	0.529	0.662	0.339
1973	0.109	0.082	0.024	0.201	0.123	0.071	0.542	0.672	0.345
1974	0.090	0.067	0.022	0.164	0.098	0.060	0.549	0.678	0.363
1975	0.089	0.063	0.024	0.164	0.093	0.064	0.544	0.678	0.370
1976	0.113	0.081	0.030	0.210	0.119	0.083	0.539	0.680	0.359
1977	0.114	0.079	0.032	0.215	0.117	0.089	0.530	0.676	0.358
1978	0.117	0.079	0.035	0.222	0.116	0.096	0.529	0.688	0.360
1979	0.107	0.071	0.034	0.193	0.099	0.089	0.553	0.721	0.377
1980	0.088	0.057	0.030	0.154	0.076	0.076	0.567	0.746	0.395
1981	0.084	0.053	0.030	0.149	0.070	0.077	0.566	0.763	0.393
1982	0.065	0.040	0.025	0.118	0.053	0.064	0.553	0.754	0.394
1983	0.077	0.046	0.030	0.144	0.063	0.080	0.533	0.737	0.379
1984	0.082	0.050	0.031	0.154	0.068	0.084	0.528	0.726	0.371
1985	0.080	0.049	0.031	0.155	0.069	0.085	0.518	0.712	0.360
1986	0.086	0.052	0.033	0.164	0.073	0.090	0.526	0.714	0.373
1987	0.095	0.058	0.036	0.180	0.081	0.098	0.530	0.716	0.374
1988	0.102	0.063	0.038	0.189	0.088	0.100	0.539	0.717	0.383
1989	0.103	0.064	0.038	0.190	0.090	0.098	0.544	0.710	0.390
1990	0.094	0.058	0.035	0.169	0.079	0.088	0.554	0.731	0.395
1991	0.092	0.056	0.036	0.164	0.076	0.086	0.565	0.736	0.413
1992	0.099	0.059	0.039	0.176	0.081	0.093	0.564	0.732	0.416
1993	0.109	0.066	0.042	0.194	0.091	0.101	0.561	0.724	0.414
Avg									
1965-70	0.073	0.055	0.016	NA	NA	NA	NA	NA	NA
1971-80	0.101	0.071	0.027	0.187	0.105	0.075	0.539	0.684	0.361
1981-93	0.090	0.055	0.034	0.165	0.076	0.088	0.545	0.729	0.389

Source: Based on data reported to the UI Service of the U.S. Department of Labor. Separation denials for 1966-1970 based partly on estimates made by the author. Denials refer both to denials for the duration of a spell and fixed length disqualifications.

**Table 3. Denial Rates and Determination Rates on Nonseparation Issues, 1965 to 1993.**

Year	Denials per 10 Claimant Contacts:						
	Total NonSep	Able& Avail-able	Refusal Suitable Work	D&D Income	Misc NonSep Issues	Report Require-ments	Other NonSep Issues
1965	0.148	0.115	0.010	NA	NA	NA	NA
1966	0.158	0.114	0.012	NA	NA	NA	NA
1967	0.149	0.088	0.010	NA	NA	NA	NA
1968	0.151	0.089	0.009	NA	NA	NA	NA
1969	0.149	0.089	0.009	NA	NA	NA	NA
1970	0.125	0.072	0.005	NA	NA	NA	NA
1971	0.130	0.075	0.005	0.023	0.027	NA	NA
1972	0.144	0.089	0.007	0.021	0.028	NA	NA
1973	0.159	0.098	0.008	0.021	0.032	NA	NA
1974	0.128	0.078	0.005	0.017	0.028	NA	NA
1975	0.109	0.061	0.004	0.017	0.027	NA	NA
1976	0.154	0.093	0.006	0.018	0.038	NA	NA
1977	0.161	0.095	0.006	0.016	0.044	NA	NA
1978	0.182	0.102	0.006	0.018	0.056	NA	NA
1979	0.156	0.091	0.005	0.017	0.043	NA	NA
1980	0.131	0.067	0.004	0.026	NA	0.021	0.013
1981	0.135	0.068	0.003	0.027	NA	0.023	0.014
1982	0.107	0.050	0.002	0.026	NA	0.018	0.011
1983	0.109	0.051	0.002	0.024	NA	0.020	0.012
1984	0.128	0.060	0.003	0.026	NA	0.025	0.014
1985	0.129	0.060	0.003	0.027	NA	0.026	0.013
1986	0.139	0.063	0.003	0.031	NA	0.028	0.015
1987	0.152	0.068	0.003	0.031	NA	0.034	0.015
1988	0.155	0.069	0.003	0.027	NA	0.040	0.016
1989	0.150	0.066	0.003	0.028	NA	0.037	0.015
1990	0.143	0.057	0.003	0.036	NA	0.035	0.013
1991	0.126	0.048	0.002	0.034	NA	0.031	0.012
1992	0.122	0.046	0.002	0.031	NA	0.030	0.014
1993	0.130	0.048	0.003	0.033	NA	0.029	0.017
<b>Avg</b>							
1965-70	0.147	0.095	0.009	NA	NA	NA	NA
1971-80	0.145	0.085	0.005	0.019	0.036	NA	NA
1981-93	0.133	0.058	0.003	0.029	NA	0.029	0.014

Source: Based on data reported to the UI Service of the U.S. Department of Labor. Nonseparation denials for 1966-1970 based partly on estimates made by the author. Denials both refer to denials for the duration of a spell and fixed length disqualifications. For miscellaneous nonseparation issues the average is for 1971-1979.

Table 3. (Cont.) Denial Rates and Determination Rates on Nonseparation Issues, 1965 to 1993.

Year	Total NonSep	Determinations per 10 Claimant Contacts:					
		Able & Avail- able	Refusal Suitable Work	D&D Income	Misc NonSep Issues	Report Require- ments	Other NonSep Issues
1965	NA	NA	NA	NA	NA	NA	NA
1966	NA	NA	NA	NA	NA	NA	NA
1967	NA	NA	NA	NA	NA	NA	NA
1968	NA	NA	NA	NA	NA	NA	NA
1969	NA	NA	NA	NA	NA	NA	NA
1970	NA	NA	NA	NA	NA	NA	NA
1971	0.340	0.211	0.016	0.037	0.076	NA	NA
1972	0.391	0.249	0.022	0.035	0.085	NA	NA
1973	0.434	0.275	0.028	0.037	0.095	NA	NA
1974	0.346	0.214	0.019	0.030	0.083	NA	NA
1975	0.291	0.176	0.012	0.028	0.075	NA	NA
1976	0.418	0.264	0.017	0.032	0.105	NA	NA
1977	0.439	0.273	0.017	0.031	0.118	NA	NA
1978	0.501	0.303	0.019	0.034	0.145	NA	NA
1979	0.423	0.262	0.018	0.033	0.110	NA	NA
1980	0.317	0.181	0.012	0.044	NA	0.052	0.028
1981	0.311	0.173	0.012	0.045	NA	0.053	0.027
1982	0.231	0.118	0.007	0.043	NA	0.041	0.022
1983	0.239	0.119	0.008	0.042	NA	0.046	0.024
1984	0.276	0.134	0.011	0.045	NA	0.059	0.028
1985	0.253	0.119	0.010	0.045	NA	0.056	0.024
1986	0.250	0.111	0.010	0.050	NA	0.055	0.025
1987	0.266	0.115	0.011	0.053	NA	0.063	0.024
1988	0.273	0.114	0.012	0.053	NA	0.069	0.025
1989	0.251	0.102	0.012	0.052	NA	0.060	0.024
1990	0.232	0.094	0.010	0.055	NA	0.052	0.021
1991	0.206	0.080	0.008	0.053	NA	0.045	0.020
1992	0.202	0.078	0.008	0.050	NA	0.044	0.021
1993	0.214	0.082	0.009	0.054	NA	0.044	0.026
Avg							
1965-70	NA	NA	NA	NA	NA	NA	NA
1971-80	0.390	0.241	0.018	0.034	0.099	NA	NA
1981-93	0.246	0.111	0.010	0.049	NA	0.053	0.024

Source: See the first page of this table.

Table 3. (Cont.) Denial Rates and Determination Rates on Nonseparation Issues, 1965 to 1993.

Year	Total NonSep	Able & Avail	Denials per Determination:				Report Requirements	Other NonSep Issues
			Refusal Suitable Work	D&D Income	Misc NonSep Issues			
1965	NA	NA	NA	NA	NA	NA	NA	
1966	NA	NA	NA	NA	NA	NA	NA	
1967	NA	NA	NA	NA	NA	NA	NA	
1968	NA	NA	NA	NA	NA	NA	NA	
1969	NA	NA	NA	NA	NA	NA	NA	
1970	NA	NA	NA	NA	NA	NA	NA	
1971	0.381	0.355	0.308	0.623	0.351	NA	NA	
1972	0.369	0.355	0.301	0.590	0.334	NA	NA	
1973	0.367	0.357	0.276	0.578	0.341	NA	NA	
1974	0.370	0.364	0.277	0.568	0.333	NA	NA	
1975	0.375	0.349	0.323	0.593	0.362	NA	NA	
1976	0.368	0.351	0.346	0.552	0.356	NA	NA	
1977	0.366	0.349	0.346	0.522	0.369	NA	NA	
1978	0.363	0.336	0.320	0.528	0.386	NA	NA	
1979	0.368	0.348	0.292	0.511	0.388	NA	NA	
1980	0.414	0.373	0.290	0.586	NA	0.402	0.482	
1981	0.434	0.392	0.292	0.594	NA	0.426	0.515	
1982	0.462	0.424	0.290	0.603	NA	0.438	0.486	
1983	0.454	0.429	0.286	0.561	NA	0.428	0.496	
1984	0.464	0.448	0.265	0.581	NA	0.429	0.498	
1985	0.511	0.502	0.270	0.613	NA	0.471	0.554	
1986	0.556	0.565	0.259	0.620	NA	0.512	0.604	
1987	0.572	0.592	0.266	0.592	NA	0.550	0.631	
1988	0.566	0.606	0.265	0.507	NA	0.579	0.629	
1989	0.596	0.644	0.266	0.540	NA	0.622	0.621	
1990	0.617	0.605	0.274	0.654	NA	0.664	0.623	
1991	0.613	0.592	0.275	0.631	NA	0.681	0.627	
1992	0.606	0.581	0.284	0.613	NA	0.681	0.651	
1993	0.610	0.590	0.285	0.617	NA	0.668	0.672	
<b>Avg</b>								
1965-70	NA	NA	NA	NA	NA	NA	NA	
1971-80	0.374	0.354	0.308	0.565	0.358	NA	NA	
1981-93	0.543	0.536	0.275	0.594	NA	0.550	0.585	

Source: See the first page of this table.

Table 4. Denial Rates and Determination Rates on Separation Issues by Census Division

Div	Denials Per New Spell			Determinations per Spell			Denials per Determination		
	Tot Sep	Vol Quit	Miscōn-duct	Tot Sep	Vol Quit	Miscon-duct	Tot Sep	Vol Quit	Miscon-duct
Divisional Averages 1965-1970									
NEng	0.055	0.043	0.012	NA	NA	NA	NA	NA	NA
MAtl	0.040	0.031	0.005	NA	NA	NA	NA	NA	NA
ENC	0.071	0.052	0.018	NA	NA	NA	NA	NA	NA
WNC	0.113	0.088	0.024	NA	NA	NA	NA	NA	NA
SAtl	0.118	0.087	0.028	NA	NA	NA	NA	NA	NA
ESC	0.086	0.062	0.025	NA	NA	NA	NA	NA	NA
WSC	0.159	0.117	0.042	NA	NA	NA	NA	NA	NA
Mt	0.111	0.083	0.028	NA	NA	NA	NA	NA	NA
Pac	0.072	0.056	0.016	NA	NA	NA	NA	NA	NA
US	0.073	0.055	0.016	NA	NA	NA	NA	NA	NA
Divisional Averages 1971-1980									
NEng	0.081	0.062	0.018	0.140	0.086	0.051	0.582	0.723	0.346
MAtl	0.057	0.037	0.014	0.123	0.066	0.038	0.467	0.574	0.389
ENC	0.106	0.076	0.029	0.182	0.109	0.070	0.583	0.695	0.408
WNC	0.180	0.137	0.042	0.329	0.206	0.104	0.546	0.669	0.402
SAtl	0.126	0.086	0.037	0.206	0.105	0.096	0.610	0.820	0.387
ESC	0.090	0.059	0.031	0.141	0.078	0.062	0.643	0.769	0.493
WSC	0.226	0.153	0.072	0.373	0.184	0.188	0.602	0.829	0.379
Mt	0.176	0.130	0.043	0.346	0.229	0.109	0.514	0.582	0.396
Pac	0.083	0.062	0.021	0.185	0.096	0.089	0.447	0.644	0.236
US	0.101	0.071	0.027	0.187	0.105	0.075	0.539	0.684	0.361
Divisional Averages 1981-1993									
NEng	0.064	0.046	0.018	0.146	0.069	0.076	0.444	0.659	0.245
MAtl	0.058	0.034	0.024	0.111	0.049	0.061	0.524	0.694	0.393
ENC	0.081	0.051	0.030	0.146	0.071	0.074	0.562	0.723	0.411
WNC	0.126	0.083	0.043	0.219	0.102	0.115	0.573	0.811	0.372
SAtl	0.103	0.055	0.046	0.168	0.065	0.100	0.611	0.851	0.457
ESC	0.071	0.037	0.034	0.106	0.044	0.062	0.671	0.841	0.551
WSC	0.157	0.093	0.063	0.296	0.119	0.177	0.529	0.780	0.359
Mt	0.142	0.094	0.047	0.250	0.134	0.112	0.565	0.699	0.415
Pac	0.084	0.056	0.027	0.173	0.088	0.083	0.485	0.636	0.326
US	0.090	0.055	0.034	0.165	0.076	0.088	0.545	0.729	0.389

Source: Based on state level data reported to the UI Service of the U.S. Department of Labor. Separation denials for 1965-1970 based partly on estimates made by the author.

Table 5. Denial Rates and Determination Rates on  
Nonseparation Issues by Census Division

Div	Total NonSep	Denials per 10 Claimant Contacts:					Report Require- ments	Other NonSep Issues
		Able & Avail- able	Refusal Suitable Work	D&D Income	Misc NonSep Issues			
Divisional Averages 1965-1970								
NEng	0.089	0.057	0.008	NA	NA	NA	NA	
MAtl	0.208	0.137	0.009	NA	NA	NA	NA	
ENC	0.167	0.108	0.009	NA	NA	NA	NA	
WNC	0.102	0.067	0.008	NA	NA	NA	NA	
SAtl	0.128	0.076	0.013	NA	NA	NA	NA	
ESC	0.047	0.028	0.005	NA	NA	NA	NA	
WSC	0.116	0.081	0.014	NA	NA	NA	NA	
Mt	0.134	0.082	0.010	NA	NA	NA	NA	
Pac	0.124	0.077	0.009	NA	NA	NA	NA	
US	0.147	0.095	0.009	NA	NA	NA	NA	
Divisional Averages 1971-1980								
NEng	0.087	0.048	0.005	0.015	0.018	NA	NA	
MAtl	0.167	0.100	0.005	0.027	0.036	NA	NA	
ENC	0.150	0.084	0.006	0.020	0.041	NA	NA	
WNC	0.166	0.090	0.006	0.034	0.036	NA	NA	
SAtl	0.109	0.062	0.008	0.014	0.028	NA	NA	
ESC	0.071	0.036	0.004	0.014	0.017	NA	NA	
WSC	0.110	0.066	0.007	0.013	0.022	NA	NA	
Mt	0.201	0.118	0.009	0.030	0.040	NA	NA	
Pac	0.181	0.113	0.005	0.009	0.054	NA	NA	
US	0.145	0.085	0.005	0.019	0.036	NA	NA	
Divisional Averages 1981-1993								
NEng	0.108	0.033	0.002	0.046	NA	0.012	0.015	
MAtl	0.099	0.047	0.002	0.024	NA	0.022	0.003	
ENC	0.105	0.037	0.002	0.031	NA	0.020	0.015	
WNC	0.213	0.117	0.003	0.048	NA	0.038	0.008	
SAtl	0.112	0.061	0.003	0.024	NA	0.014	0.009	
ESC	0.134	0.032	0.002	0.064	NA	0.025	0.011	
WSC	0.157	0.064	0.003	0.025	NA	0.042	0.021	
Mt	0.260	0.093	0.003	0.078	NA	0.067	0.019	
Pac	0.148	0.073	0.003	0.007	NA	0.042	0.023	
US	0.133	0.058	0.003	0.029	NA	0.029	0.014	

Source: Based on state level data reported to the UI Service of the U.S. Department of Labor. For miscellaneous nonseparation denials the averages are for 1971-1979.

Table 5. (Cont.) Denial Rates and Determination Rates on Nonseparation Issues by Census Division

Div	Total NonSep	Determinations per 10 Claimant Contacts:					
		Able & Available	Refusal Suitable Work	D&D Income	Misc NonSep Issues	Report Requirements	Other NonSep Issues
<b>Divisional Averages 1965-1970</b>							
NEng	NA	NA	NA	NA	NA	NA	NA
MAtl	NA	NA	NA	NA	NA	NA	NA
ENC	NA	NA	NA	NA	NA	NA	NA
WNC	NA	NA	NA	NA	NA	NA	NA
SAtl	NA	NA	NA	NA	NA	NA	NA
ESC	NA	NA	NA	NA	NA	NA	NA
WSC	NA	NA	NA	NA	NA	NA	NA
Mt	NA	NA	NA	NA	NA	NA	NA
Pac	NA	NA	NA	NA	NA	NA	NA
US	NA	NA	NA	NA	NA	NA	NA
<b>Divisional Averages 1971-1980</b>							
NEng	0.276	0.194	0.011	0.022	0.048	NA	NA
MAtl	0.504	0.303	0.014	0.066	0.125	NA	NA
ENC	0.353	0.233	0.017	0.029	0.077	NA	NA
WNC	0.287	0.160	0.018	0.045	0.067	NA	NA
SAtl	0.341	0.196	0.018	0.019	0.115	NA	NA
ESC	0.210	0.130	0.010	0.021	0.051	NA	NA
WSC	0.204	0.124	0.024	0.018	0.037	NA	NA
Mt	0.394	0.248	0.029	0.038	0.075	NA	NA
Pac	0.517	0.315	0.029	0.014	0.167	NA	NA
US	0.390	0.241	0.018	0.034	0.101	NA	NA
<b>Divisional Averages 1981-1993</b>							
NEng	0.215	0.079	0.007	0.073	NA	0.022	0.034
MAtl	0.335	0.154	0.008	0.080	NA	0.086	0.007
ENC	0.205	0.093	0.008	0.042	NA	0.040	0.022
WNC	0.282	0.152	0.012	0.059	NA	0.043	0.016
SAtl	0.175	0.085	0.009	0.039	NA	0.025	0.017
ESC	0.179	0.052	0.005	0.080	NA	0.029	0.014
WSC	0.244	0.102	0.015	0.041	NA	0.047	0.039
Mt	0.363	0.141	0.013	0.090	NA	0.084	0.033
Pac	0.244	0.115	0.013	0.012	NA	0.067	0.038
US	0.246	0.111	0.010	0.049	NA	0.053	0.024

Source: See the first page of this table.

Table 5. (Cont.) Denial Rates and Determination Rates on Nonseparation Issues by Census Division

Div	Total NonSep	Able & Available	Denials per Determination:				Report Requirements	Other NonSep Issues
			Refusal Suitable Work	D&D Income	Misc NonSep Issues			
Divisional Averages 1965-1970								
NEng	NA	NA	NA	NA	NA	NA	NA	
MAI	NA	NA	NA	NA	NA	NA	NA	
ENC	NA	NA	NA	NA	NA	NA	NA	
WNC	NA	NA	NA	NA	NA	NA	NA	
SAtI	NA	NA	NA	NA	NA	NA	NA	
ESC	NA	NA	NA	NA	NA	NA	NA	
WSC	NA	NA	NA	NA	NA	NA	NA	
Mt	NA	NA	NA	NA	NA	NA	NA	
Pac	NA	NA	NA	NA	NA	NA	NA	
US	NA	NA	NA	NA	NA	NA	NA	
Divisional Averages 1971-1980								
NEng	0.314	0.251	0.434	0.707	0.373	NA	NA	
MAI	0.336	0.337	0.340	0.417	0.285	NA	NA	
ENC	0.426	0.358	0.337	0.685	0.548	NA	NA	
WNC	0.586	0.562	0.357	0.768	0.537	NA	NA	
SAtI	0.340	0.337	0.413	0.704	0.248	NA	NA	
ESC	0.345	0.307	0.444	0.657	0.349	NA	NA	
WSC	0.543	0.534	0.293	0.725	0.666	NA	NA	
Mt	0.513	0.483	0.303	0.796	0.506	NA	NA	
Pac	0.352	0.360	0.170	0.652	0.328	NA	NA	
US	0.374	0.354	0.308	0.565	0.356	NA	NA	
Divisional Averages 1981-1993								
NEng	0.509	0.435	0.281	0.634	NA	0.568	0.464	
MAI	0.302	0.314	0.274	0.303	NA	0.289	0.487	
ENC	0.518	0.412	0.294	0.731	NA	0.500	0.686	
WNC	0.755	0.768	0.269	0.807	NA	0.860	0.488	
SAtI	0.644	0.733	0.344	0.645	NA	0.589	0.548	
ESC	0.753	0.614	0.495	0.809	NA	0.848	0.784	
WSC	0.643	0.642	0.229	0.613	NA	0.888	0.578	
Mt	0.712	0.656	0.246	0.858	NA	0.792	0.562	
Pac	0.609	0.642	0.241	0.606	NA	0.618	0.601	
US	0.543	0.536	0.275	0.594	NA	0.550	0.585	

Source: See the first page of this table.

Table 6. Appeals Volume and Decisions in Favor of Appellants  
by Level of Appeal and Appellant, 1965 to 1993

Year	All Appeals Decisions:				Decisions For Appellant:			
	Lower Level :		Higher Level:		Lower Level:		Higher Level:	
	Claim- ant	Em- ployer	Claim- ant	Em- ployer	Claim- ant	Em- ployer	Claim- ant	Em- ployer
1965	194.0	29.9	29.6	6.5	41.5	8.7	1.8	1.2
1966	176.5	25.1	27.2	5.1	53.7	12.8	3.5	1.5
1967	177.3	29.6	26.3	5.5	48.8	10.7	3.7	1.3
1968	169.8	33.0	25.4	6.2	49.0	12.7	3.9	1.3
1969	156.9	30.9	25.0	6.1	48.2	14.3	3.3	1.6
1970	190.2	43.6	27.6	7.5	44.7	13.1	3.3	1.6
1971	229.4	56.9	35.3	10.8	54.7	17.2	3.4	2.2
1972	250.9	56.0	36.9	11.7	66.2	22.9	3.7	3.2
1973	271.8	59.3	41.2	12.2	69.9	22.3	4.1	3.4
1974	312.7	75.6	47.1	16.6	73.8	23.2	5.5	3.4
1975	438.4	107.8	63.8	22.7	82.9	27.3	5.8	4.3
1976	541.5	113.8	80.5	25.2	120.3	33.9	6.8	6.2
1977	571.1	119.0	92.9	26.1	144.0	39.4	9.5	5.7
1978	568.5	132.0	88.9	27.9	155.8	42.0	11.1	5.4
1979	595.2	144.5	100.9	30.9	151.4	43.2	10.1	5.5
1980	669.3	162.7	102.5	36.2	158.2	48.7	11.7	6.3
1981	684.1	174.8	112.2	43.1	174.5	56.3	13.5	6.6
1982	726.2	175.2	117.4	43.8	176.4	59.2	15.5	8.7
1983	726.8	179.3	133.8	45.5	196.6	58.8	14.7	8.8
1984	628.9	167.1	110.9	44.5	204.8	60.2	15.5	8.3
1985	626.7	170.1	98.4	40.6	177.2	56.4	15.7	7.6
1986	635.2	180.5	99.6	40.4	179.1	57.2	13.1	6.5
1987	625.8	178.1	97.3	40.8	189.4	64.1	13.7	6.6
1988	574.7	171.9	88.5	37.3	186.3	63.5	14.1	6.6
1989	574.2	179.3	81.2	35.4	170.7	61.3	12.0	6.7
1990	626.9	193.9	89.4	40.4	169.9	64.6	11.3	6.8
1991	726.4	230.5	98.8	46.6	184.3	68.2	12.6	7.6
1992	832.2	269.1	116.4	54.2	213.1	77.6	14.2	9.1
1993	746.7	250.8	124.0	59.6	255.8	90.3	18.0	10.5
Avg								
1965-70	177.5	32.0	26.9	6.1	47.7	12.0	3.3	1.4
1971-80	444.9	102.8	69.0	22.0	107.7	32.0	7.2	4.6
1981-93	671.9	193.9	105.2	44.0	190.6	64.5	14.1	7.7

Source: Based on data reported by the states to the UI Service of the U.S. Department of Labor. All data measured in thousands.

Table 7. Rates of Appeals and Success Rates of Appellants  
by Level of Appeal and Appellant, 1965 to 1993

Year	Rates of Appeals:				Success Rates:			
	Lower Level :		Higher Level:		Lower Level:		Higher Level:	
	Claim- ant	Em- ployer	Claim- ant	Em- ployer	Claim- ant	Em- ployer	Claim- ant	Em- ployer
1965	0.100	NA	0.193	0.092	0.277	0.427	0.119	0.233
1966	0.107	NA	0.197	0.081	0.276	0.424	0.137	0.251
1967	0.098	NA	0.187	0.083	0.276	0.430	0.149	0.234
1968	0.101	NA	0.187	0.092	0.284	0.433	0.132	0.258
1969	0.095	NA	0.199	0.097	0.285	0.423	0.134	0.266
1970	0.084	NA	0.181	0.092	0.288	0.395	0.121	0.291
1971	0.090	0.017	0.190	0.107	0.289	0.402	0.106	0.298
1972	0.098	0.017	0.181	0.112	0.279	0.397	0.111	0.294
1973	0.107	0.018	0.186	0.111	0.272	0.391	0.132	0.275
1974	0.102	0.020	0.183	0.127	0.265	0.361	0.123	0.260
1975	0.109	0.021	0.181	0.117	0.274	0.315	0.106	0.274
1976	0.132	0.021	0.184	0.115	0.266	0.346	0.118	0.226
1977	0.135	0.021	0.203	0.112	0.273	0.353	0.120	0.208
1978	0.130	0.022	0.193	0.116	0.266	0.327	0.114	0.196
1979	0.143	0.027	0.208	0.122	0.266	0.337	0.116	0.203
1980	0.145	0.031	0.186	0.129	0.261	0.346	0.132	0.182
1981	0.161	0.039	0.198	0.148	0.258	0.339	0.138	0.202
1982	0.168	0.040	0.200	0.140	0.271	0.336	0.126	0.200
1983	0.197	0.046	0.230	0.141	0.282	0.336	0.116	0.183
1984	0.191	0.049	0.218	0.154	0.282	0.338	0.141	0.171
1985	0.179	0.051	0.195	0.139	0.286	0.336	0.133	0.161
1986	0.171	0.058	0.195	0.132	0.298	0.355	0.137	0.164
1987	0.178	0.063	0.194	0.136	0.298	0.356	0.145	0.162
1988	0.170	0.063	0.190	0.133	0.297	0.357	0.136	0.179
1989	0.164	0.068	0.173	0.125	0.296	0.360	0.140	0.193
1990	0.162	0.071	0.175	0.130	0.294	0.352	0.141	0.189
1991	0.165	0.075	0.167	0.127	0.293	0.337	0.143	0.195
1992	0.199	0.091	0.175	0.125	0.307	0.336	0.155	0.193
1993	0.198	0.095	0.206	0.151	0.307	0.338	0.148	0.190
Avg								
1965-70	0.098	NA	0.191	0.090	0.281	0.422	0.132	0.255
1971-80	0.119	0.021	0.190	0.117	0.271	0.357	0.118	0.242
1981-93	0.177	0.062	0.193	0.137	0.290	0.344	0.138	0.183

Source: Based on data shown previously in Tables 1 and 6. Rates of appeals at the lower level are measured as a proportion of unfavorable nonmonetary determinations, e.g., denials for claimants and awards for employers. Rates of higher appeals are measured as proportions of unfavorable decisions from lower level of appeals, e.g., denials for claimants and awards for employers.

Table 8. Lower Authority Appeals by Issue, 1965 to 1993

Year	Total	Vol Quit	Miscon- duct	Refusal Suitable Work	Able& Avail- able	Labor Disp& Other
1965	224.2	83.3	36.0	15.2	53.9	35.7
1966	201.9	76.5	29.8	14.9	49.8	30.8
1967	207.0	78.4	33.7	14.6	48.5	31.7
1968	203.0	76.9	33.5	13.3	49.4	29.8
1969	187.9	71.8	31.6	12.3	44.1	28.1
1970	234.0	93.0	44.3	11.2	49.3	36.2
1971	286.5	114.7	60.0	12.6	54.2	45.2
1972	307.1	124.7	61.2	13.3	57.5	50.4
1973	331.5	133.6	65.1	16.2	64.3	52.2
1974	388.9	153.5	89.5	14.9	71.1	59.9
1975	546.9	205.9	150.1	17.4	83.8	89.8
1976	656.5	248.0	174.9	22.8	100.0	110.7
1977	691.1	247.8	186.7	24.3	112.3	120.0
1978	701.7	236.4	194.5	23.2	111.4	136.1
1979	741.1	250.1	209.7	23.8	107.5	150.0
1980	833.4	267.9	251.8	22.2	99.3	192.1
1981	860.6	265.8	278.0	20.4	99.1	197.2
1982	903.8	269.5	318.9	16.8	96.9	201.7
1983	908.3	265.9	328.2	17.2	93.0	204.0
1984	797.0	244.0	289.1	15.2	67.8	181.0
1985	798.4	243.9	288.5	14.7	65.4	185.8
1986	817.7	241.1	304.2	13.3	70.1	189.0
1987	805.0	234.2	301.1	13.4	65.6	190.7
1988	747.2	221.5	279.2	13.1	53.2	180.2
1989	753.2	224.2	280.3	13.9	52.8	182.0
1990	821.5	244.0	301.3	13.1	57.1	206.0
1991	957.8	275.3	360.6	13.8	62.5	245.5
1992	1101.8	309.8	409.4	16.3	69.7	296.6
1993	997.9	288.1	376.0	15.4	63.7	254.8
<b>Avg</b>						
1965-70	209.6	80.0	34.8	13.6	49.2	32.1
1971-80	548.5	198.3	144.3	19.1	86.1	100.6
1981-93	866.9	255.9	316.5	15.1	70.5	208.8

Source: Based on data reported by the states to the UI Service of the U.S. Department of Labor. All data measured in thousands. Totals include a small number of appeals by other parties as well as appeals by claimants and employers.

**Table 9. Rates of Lower Authority Appeals per Nonmonetary  
Determination by Nonmonetary Issue, 1971 to 1993**

<b>Year</b>	<b>Total</b>	<b>Vol Quit</b>	<b>Miscon- duct</b>	<b>Refusal Suitable Work</b>	<b>Able&amp; Avail- able</b>	<b>Labor Disp&amp; Other</b>
1971	0.048	0.087	0.075	0.072	0.024	0.034
1972	0.052	0.092	0.076	0.066	0.025	0.041
1973	0.057	0.094	0.080	0.072	0.029	0.045
1974	0.056	0.091	0.087	0.068	0.028	0.041
1975	0.060	0.099	0.105	0.081	0.026	0.043
1976	0.070	0.120	0.121	0.100	0.027	0.054
1977	0.070	0.124	0.123	0.100	0.029	0.053
1978	0.068	0.127	0.126	0.092	0.027	0.052
1979	0.078	0.137	0.128	0.091	0.029	0.071
1980	0.085	0.150	0.140	0.092	0.028	0.078
1981	0.098	0.173	0.164	0.098	0.032	0.087
1982	0.103	0.183	0.178	0.103	0.035	0.080
1983	0.119	0.208	0.201	0.109	0.040	0.092
1984	0.118	0.202	0.194	0.099	0.035	0.094
1985	0.117	0.187	0.180	0.095	0.036	0.096
1986	0.120	0.184	0.188	0.087	0.041	0.093
1987	0.127	0.187	0.200	0.090	0.043	0.101
1988	0.122	0.173	0.190	0.086	0.038	0.100
1989	0.123	0.159	0.183	0.090	0.041	0.104
1990	0.125	0.166	0.184	0.088	0.041	0.106
1991	0.128	0.170	0.197	0.090	0.040	0.106
1992	0.155	0.199	0.229	0.108	0.048	0.136
1993	0.155	0.199	0.234	0.110	0.050	0.131
<b>Avg</b>						
1971-80	0.064	0.112	0.106	0.083	0.027	0.051
1981-93	0.124	0.184	0.194	0.096	0.040	0.102

**Source: Based on data reported by the states to the UI Service of the  
U.S. Department of Labor.**

**Table 10. Rates of Appeals and Success Rates of Appellants  
by Level of Appeal, Appellant and Census Division**

Div	Rates of Appeals:				Success Rates:			
	Lower Level : Claim- ant	Em- ployer	Higher Level: Claim- ant	Em- ployer	Lower Level: Claim- ant	Em- ployer	Higher Level: Claim- ant	Em- ployer
<b>Divisional Averages 1967-1970</b>								
NEng	0.128	NA	0.150	0.058	0.293	0.461	0.282	0.333
MAtl	0.125	NA	0.188	0.056	0.250	0.279	0.121	0.183
ENC	0.059	NA	0.209	0.147	0.288	0.460	0.139	0.304
WNC	0.078	NA	0.143	0.086	0.263	0.300	0.076	0.157
SAtl	0.075	NA	0.181	0.075	0.277	0.483	0.144	0.281
ESC	0.127	NA	0.233	0.111	0.255	0.411	0.152	0.284
WSC	0.150	NA	0.161	0.086	0.313	0.393	0.149	0.220
Mt	0.077	NA	0.151	0.069	0.319	0.381	0.139	0.238
Pac	0.076	NA	0.222	0.110	0.341	0.459	0.103	0.287
US	0.095	NA	0.188	0.091	0.283	0.420	0.134	0.262
<b>Divisional Averages 1971-1980</b>								
NEng	0.173	0.019	0.165	0.088	0.252	0.335	0.187	0.241
MAtl	0.149	0.008	0.210	0.095	0.242	0.300	0.069	0.220
ENC	0.076	0.035	0.219	0.181	0.261	0.353	0.144	0.289
WNC	0.102	0.035	0.141	0.106	0.288	0.344	0.092	0.184
SAtl	0.118	0.030	0.168	0.098	0.280	0.439	0.204	0.259
ESC	0.169	0.034	0.231	0.135	0.239	0.437	0.116	0.275
WSC	0.170	0.059	0.170	0.109	0.314	0.351	0.117	0.132
Mt	0.113	0.027	0.158	0.101	0.286	0.378	0.114	0.185
Pac	0.099	0.015	0.184	0.107	0.311	0.324	0.127	0.254
US	0.119	0.021	0.190	0.117	0.271	0.357	0.118	0.242
<b>Divisional Averages 1981-1993</b>								
NEng	0.187	0.085	0.179	0.117	0.300	0.222	0.154	0.129
MAtl	0.219	0.022	0.199	0.134	0.268	0.266	0.146	0.197
ENC	0.146	0.062	0.239	0.186	0.260	0.304	0.137	0.207
WNC	0.145	0.108	0.179	0.139	0.308	0.363	0.159	0.197
SAtl	0.187	0.110	0.187	0.143	0.287	0.445	0.155	0.220
ESC	0.189	0.115	0.251	0.169	0.228	0.388	0.109	0.200
WSC	0.228	0.102	0.221	0.154	0.289	0.348	0.093	0.116
Mt	0.162	0.095	0.143	0.105	0.315	0.393	0.130	0.143
Pac	0.157	0.042	0.142	0.093	0.330	0.344	0.181	0.210
US	0.177	0.062	0.193	0.137	0.290	0.344	0.138	0.183

Source: Based on state data identical the national data shown previously in Tables 1 and 6. Rates of appeals and success rates measured as in Table 7.

**Table 11. Rates of Lower Authority Appeals per Nonmonetary Determination by Nonmonetary Issue and Census Division**

Div	Total	Vol Quit	Misconduct	Refusal Suitable Work	Able & Available	Labor Disp & Other
<b>Divisional Averages 1971-1980</b>						
NEng	0.083	0.144	0.125	0.166	0.035	0.089
MAtl	0.059	0.192	0.160	0.104	0.024	0.035
ENC	0.055	0.063	0.087	0.085	0.036	0.056
WNC	0.095	0.181	0.172	0.120	0.034	0.068
SAtl	0.156	0.266	0.272	0.150	0.052	0.075
ESC	0.141	0.305	0.249	0.119	0.030	0.100
WSC	0.126	0.182	0.177	0.140	0.045	0.113
Mt	0.072	0.079	0.107	0.068	0.041	0.092
Pac	0.047	0.096	0.080	0.027	0.015	0.046
US	0.064	0.112	0.106	0.083	0.027	0.051

**Divisional Averages 1981-1993**

NEng	0.133	0.243	0.212	0.139	0.047	0.073
MAtl	0.094	0.254	0.207	0.097	0.021	0.064
ENC	0.106	0.139	0.185	0.118	0.036	0.080
WNC	0.132	0.205	0.185	0.151	0.051	0.102
SAtl	0.157	0.200	0.199	0.133	0.049	0.149
ESC	0.166	0.269	0.275	0.204	0.051	0.083
WSC	0.174	0.237	0.236	0.089	0.062	0.130
Mt	0.138	0.191	0.233	0.087	0.090	0.084
Pac	0.106	0.112	0.122	0.039	0.033	0.167
US	0.124	0.184	0.194	0.096	0.040	0.102

**Source:** Based on state data for appeals and nonmonetary determinations by issue. Data on nonmonetary determinations first available in 1971.

**BRIEFING PAPER ON THE UNEMPLOYMENT INSURANCE  
DATA SYSTEM**

**PREPARED FOR THE ADVISORY COMMISSION ON  
UNEMPLOYMENT COMPENSATION**

**BY MALCOLM S. COHEN**

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**MAY 1, 1995**



## **Purpose of Briefing**

The purpose of this briefing is to provide a non-technical summary (10 - 20 pages) of the issues involved with regard to the data generated by the Unemployment Insurance (UI) System. The briefing (1) describes the data, (2) identifies the uses made of the data, (3) explores some of the ways in which the information generated by the System can be improved, and (4) discusses some of the tradeoffs to be considered in improving the data. The entire study was completed in approximately one month. The scope of the study was limited to a few personal visits, about a dozen telephone interviews and the review of published and unpublished studies, correspondence and other relevant documents. (See Appendix A for a list of persons interviewed.) Because of the highly technical nature of some of the issues involved, it was not possible to carry out a sufficiently comprehensive study in this time frame to conclusively recommend detailed changes to the UI data system. However several areas for future study have been identified and the major issues are discussed.

## **Data Generated by the Unemployment Insurance System**

It would take thousands of pages to technically describe the different data systems related to the Unemployment Insurance System. Appendix B lists 35 national reports generated by the UI system. Most of the reports are required by the UI staff in Washington, but some of the reports are required by other agencies, such as the ES-202 report which is required by the BLS.

The reports having the greatest use outside of the administration of the UI law are:

- ES-202. This report provides the Bureau of Labor Statistics with monthly covered employment and quarterly wages for each location of a company. Information is collected on the Standard Industry Code (SIC) at each location and on quarterly taxable wages and UI contributions. Information on number of reporting units as well as an establishment mailing list is derived in conjunction with this report.
- ES-203. This report provides monthly data on the characteristics of the insured unemployed. It is based on a sample of the unemployed workers receiving unemployment insurance which averages about 10%. The sample rate varies by state. Characteristics collected include: type of claim, number of weeks claimed, current duration of unemployment, age, sex, industry and occupation.
- ETA-5210. This report provides weekly the number of claims filed for unemployment insurance.
- ETA-5159. This report is a monthly variant of ETA-5210 and includes payment activity as well.
- ES-235. This report provides information on mass layoffs generally involving 500 or more workers.
- ETA-9048. This draft report will provide quarterly information on detailed characteristics and services provided to unemployment insurance claimants selected because they are deemed likely to exhaust their benefits.

A more complete listing of reports is contained in Appendix B. Appendix C provides a more complete description of the reports and data collected most widely for use outside of the administration of the UI law.

Appendix B does not list the reports created by the states. Each state creates its own set of reports which differ in part due to differences in the state UI laws. However the most widely used state report is a wage record report which lists all workers employed in the previous quarter by social security number along with their wages paid. This report is used by the states to determine the eligibility of workers for unemployment insurance. Two states do not have this report: Michigan and New York. These states are called wage request states instead of wage reporting states because they request the information from employers after a claim is filed rather than requiring the information before a claim is filed. Michigan will become a wage reporting state by 1997. All states are required by the Deficit Reduction Act of 1984 to have an income and eligibility verification system (IEVS) to verify eligibility for various Federal programs. Wage records serve this purpose in the wage reporting states. New York satisfies it with tax records and Michigan uses a system run in conjunction with the welfare and employment service departments.

The wage records contain different information, due in large part to differences in state UI laws. For example in the State of Washington, UI eligibility depends on hours of employment. In Minnesota, information on weeks of employment in each quarter is requested. Alaska requests information on the occupation of the worker. Except in Minnesota, wage records do not identify the worksite of the employee. The wage record identifies the location of the company. Approximately 93% of total wage and salary workers are covered by state unemployment insurance according to the Bureau of Labor Statistics. The major gap in wage records is caused by exclusions to coverage: armed forces and federal government employees, self employed workers, domestic service workers, railroad workers and student workers.

Other wage or UI reports collected by states could be of potential interest to users of administrative data. For example, over a dozen states require employers to send in a report on newly hired workers by social security number within a few weeks of the date of hire for income and eligibility verification.

## Uses of Unemployment Insurance Data

The principal uses of unemployment insurance data can be categorized as follows:

- Administration of Unemployment Insurance
- Administration of other State and Federal laws
- Generation of Labor Market Information
- Evaluation of Federal and State Programs
- Research

Administration of Unemployment Insurance . Shirley Goetz, director of the Labor Market and Demographic Research Division of the New Jersey Department of Labor cautions that the reason for the collection of wage record information is to pay UI benefits accurately and in a timely manner.

As exciting as the potential may be for using administrative records for other purposes, these other uses must peacefully coexist with the original intention of the wage record system. The wage records are used by the states to determine the eligibility of a worker for benefits.

Many wage records are collected by states but not carefully examined other than to compare them to total wages reported on the ES-202 report. Incorrect social security numbers may never be caught. If a worker makes a claim and there is a discrepancy between what the worker thinks he or she is entitled to and what is contained on a wage record, an error may be corrected but otherwise the file may not be examined. Some states send employers the social security numbers and names of employees reported in previous quarters, which minimizes errors.

Wage records can also be used by the Department of Labor to determine if a worker receiving Unemployment Insurance is working at another company and receiving wages above the threshold allowed before the recipient would lose a portion of their benefit. Because the wage records could take four months from the initial hire date to be received by the State Employment Service, several states have initiated a program of new hire reports due within two weeks of hire of new employees.

The ES-202 report is a state summary derived from individual reports of employment, wages and taxable wages. The individual reports upon which the ES-202 is derived are used in the collection of Unemployment Insurance tax. Each state has its own format for the collection of the original information. The state has an interest in obtaining these reports to assure it is collecting the correct amount of tax. The Federal government has its own form for collecting its share of this tax (FUTA). ES-202 data are used in solvency studies of the UI fund and in experience rating of firms. The data are also used for workload studies and budget estimates.

The various administrative uses of some of the other UI reports are too technical for discussion in the body of this briefing. Additional details on some of the key reports can be found in Appendix C.

The newest UI form, ETA-9048, is used to follow the activities of claimants deemed likely to exhaust their UI benefits. The activity is referred to as profiling. The purpose of profiling is to target the reemployment services that are most effective for persons with various characteristics. The form was in a draft format when I reviewed it.

Administration of other State and Federal Laws. Because wage records identify the social security number of employed workers, they can be used to track the wage income of workers to verify that these workers are not claiming benefits under one program such as welfare while receiving wages in excess of the amount allowed by law. The ability of other agencies to obtain this information is required by Federal law. Some examples of this required use and enabling legislation are:

- Public Works (SSA 303 (a) (7) )
- Railroad Retirement Board (SSA 303 (c) (1) )
- Department of Agriculture and any state food stamp agency (SSA 303 (d) (1) )
- State or local child support agency (SSA (e) (1) )
- Income Eligibility Verification System for welfare (SSA 303 (f) )
- Federal Office of Child Support Enforcement (SSA 303 (h) )
- State or local Agency administering a plan for aid to needy families with children (FUTA 3304 (a) (16) )
- State or local AFDC or Child Support Program (Wagner-Peyser 3(b) )

In addition to the above mandated federal laws, some states have cooperated with other agencies in the cross matching of UI Wages or Benefits with other Program records. Identification of which states cooperate in which programs as well as how the data are used goes beyond the scope of this briefing. However, a listing of the various programs in which at least one state participates is of some interest as is the number of participating states as of 1990:

- Black Lung (1)
- Employment Service (16)
- National Guard (2)
- Immigration/Naturalization Service (7)
- Internal Revenue Service (25)
- Railroad Retirement (16)
- Job Training (17)
- Supplemental Security Income (13)
- Veterans Administration ( 9)
- Other (41 states)

Some of the other users include:

- Departments of Human Resources
- Department of Justice
- Board of Equalization
- Franchise Tax Board
- Department of Industrial Relations
- Public Employees Retirement System
- State Teachers Retirement
- Local Housing Authorities
- Universities
- State Departments of Commerce
- State Auditor Generals
- State Departments of Revenue
- H.U.D.
- Other States
- School Lunch Programs
- Internet
- Bureau of Special Investigations
- Vocational Rehabilitation
- FHA
- Workers Compensation
- Higher Education Assistance Agency
- County Courts/ Domestic Relations
- Governmental Collection Agencies
- Student Loan Boards
- Local Governments
- State Departments of Personnel
- Bendex

As one can see, many uses are made of wage records and benefits by other government agencies in the course of their business. In determining what is a proper use, federal and state laws determine when cross matches are permitted.

From a policy perspective, there is a right for individuals to have their privacy protected. However, if individuals apply for government assistance or owe the government money or even if they have reneged on their child support commitments, government policy is quite permissive in allowing these records to be used.

As these records become increasingly used by more government agencies, the possibility for abuse becomes even more likely unless safeguards are built into the system.

The Unemployment Insurance Service (UIS) attempted to draft regulations to govern some of the issues regarding dissemination of these data, (Federal Register, March 23, 1992) however extensive negative comments were received by the UIS and the proposed regulations were withdrawn. (Federal Register, Apr. 25, 1994)

Generation of Labor Market Information. Administrative data from the Unemployment Insurance System are the backbone of our federal - state labor statistics program. Without these data, the most optimistic scenario would be that the cost of running the program would be significantly greater and the quality would be significantly worse. To emphasize the importance of these data to the Federal Statistical system, Thomas Plewes, Associate Commissioner of the Bureau of Labor Statistics (BLS), indicated that he views the UI data system as primarily existing to generate data for the BLS. According to Mr. Plewes, if the BLS lost access to UI data, they would probably lose their ability to produce data on our nation's economy. There are no good substitutes.

If one analyzes the programs of the Bureau of Labor Statistics, one can see a reliance on Unemployment Insurance Data in most Bureau of Labor Statistics programs. To illustrate this, each major BLS program is listed and the importance of UI data is described. Quotes are from the BLS Handbook of Methods, Bulletin 2414, 1992. Not all references are included.

- **Employment and Unemployment Statistics:** Employment, Hours and Earnings from the Establishment Survey. "Since 1940 the basic source of benchmark information for 'all employees' has been the periodic tabulation compiled by State employment security agencies from reports of establishments covered under State UI laws. The state employment security agencies receive quarterly reports from each employer subject to the UI laws showing total employment in each month ... and total quarterly wages. The state agencies submit tabulations of these reports to BLS each quarter."
- **Employment and Unemployment Statistics:** Occupational Employment Statistics. "The sample is selected primarily from the lists of establishments reporting to the state unemployment insurance program."
- **Employment and Unemployment Statistics:** Measurement of Unemployment in States and Local Areas. "The base variable for the unemployment rate models is the statewide UI claims rate"
- **Employment and Unemployment Statistics:** Employment and Wages Covered by Unemployment Insurance. It is not necessary to quote from the Handbook for this example. A further description of the program is contained in Appendix C (ES 202).
- **Prices and Living Conditions:** Producer Prices. "The primary source for compiling the Universe of establishments is the Unemployment Insurance System"
- **Compensation Levels and Trends:** Occupational Pay and Benefits.. "BLS uses [sample] frames primarily compiled from lists provided by administrative or regulatory government agencies (primarily state unemployment insurance agencies)"

- **Compensation Levels and Trends:** Employee Benefits Survey. “The list of establishments from which the sample is drawn is the State Unemployment Insurance (UI) reports for the 50 States and the District of Columbia.”
- **Productivity.** This is one area that does not use UI data. Instead it relies on Current Employment Statistics data (collected using UI data) and data from the Bureau of Economic Analysis (which again relies on UI data to compile it).
- **Employment Projections.** This is another area that does not rely on UI data. Instead it relies on Occupational Employment data for the base year and for constructing a basis for allocating industry forecasts into occupational forecasts. However the Occupational Employment data is constructed using UI data to draw its sample.

The other major agency using Unemployment Insurance data for their estimates is the Bureau of Economic Analysis (BEA). BEA bases their estimates of wages and salaries by county and by SIC four-digit industry using the ES-202 program. They make adjustments to the data in order to correct for incomplete coverage and differences in their concepts. This detailed exposition is very important to illustrate how crucial UI data are for our present data collection system. Private companies that do not have access to UI data survey other private companies. If the BLS had to rely on these companies for data, serious disruptions would take place to the majority of BLS programs. In some industries the coverage available from private companies may be fairly good. But in other industries it could be very uneven. I did not have the time to seriously evaluate the consequences of this option, but even if the data were generally good a major disruption would be created.

State agencies rely on UI data for a variety of special reports. A survey of these reports is beyond the scope of this briefing.

Evaluation of Federal and State Programs and Research. One of the previous use categories for UI data was administration of other federal and state programs. This category could encompass evaluation of these programs as well. However generally the types of efforts listed there were matching worker social security numbers listed in wage records with social security numbers of recipients of aid in federal programs to determine if the recipient is ineligible for the government program. For example if the recipient is claiming welfare at the same time an employer reports paying the worker \$15,000 a quarter the welfare agency would like to know about this. Also the previous category included matching social security numbers to find the location of parents delinquent on child payments or delinquent on repaying federal loans.

The use of UI records in evaluation typically looks at recipients after they have received benefits from some federal program to determine how effective the program has been. With some exceptions, the interest is not in how well the individual recipient does but rather how effective the program has been in increasing employment or wages of individuals with certain general characteristics.

In some cases as in profiling or where an employability plan is developed for an individual the results on an individual may matter.

The Job Training Partnership Act of 1992 has a provision which, according to Paula Duggan of the Northeast-Midwest Institute, could "revolutionize performance management in the vocational education and occupational training world." The provision, according to Ms. Duggan, "would use existing unemployment insurance records to provide a common set of employment and earnings information that states and training program operators could use to evaluate the effectiveness of occupational training including: JTPA, vocational education, the JOBS program for welfare recipients, community college courses and programs of study in higher education. Researchers would also be able to use the information to investigate critical questions about worker mobility, dislocation and re-employment (NE-MW Economic Review October, 1992).

According to Section 405 of the Job Training Partnership Act:

"(g)(1)...the Commissioner of Labor Statistics, in cooperation with the states, shall determine appropriate procedures for establishing a nationwide database, containing information on the quarterly earnings, establishment and industry affiliation, and geographic location of employment, for all individuals for whom such information is collected by the States."

"(2) The Commissioner of Labor Statistics shall determine appropriate procedures for maintaining such information and for making such information available for policy research or program evaluation purposes or both, while ensuring the confidentiality of information and the privacy of individuals."

The Act is referring to UI wage records, however ironically these records do not identify the location of workers or the establishment in which workers are employed unless the worker happens to work in Minnesota or happens to work in a company with only one location. This is one of several limitations of wage records to be discussed in the next major section of this briefing. A summary of the BLS progress toward developing a National Wage Record Database can be found in the next major section of this briefing.

In addition to BLS efforts, a few states have begun Regional efforts to use wage records for program evaluation and research. David Stevens of the University of Baltimore School of Business has developed a regional database effort to use wage records from Maryland and other cooperating states. Jay Pfeiffer directs the Florida Education and Training Placement Information Program which matches UI wage records with education records and Training Agency records.

The State of Washington has developed a Continuous Wage and Benefit History database that contains information on covered workers, claimants and beneficiaries of an individual followed through time. This provides both cross-sectional and longitudinal information. The longitudinal aspect is a major advantage because it allows the same individuals, whether employed or not, to be followed through time for up to ten years, measuring the actual processes of change in an individual's employment status. The

CWBH contains not only quarterly data from the UI program (including records of claimants filing for UI benefits as well as employment histories for workers covered by UI provisions) but also wage data and JobNet data from the Employment Service. Some of the uses of the CWBH file identified by the State of Washington are to:

- Analyze legislative proposals relating to the UI system and determining the potential impact on UI
- Support operations research by providing data useful for agency operations, such as supporting workload and making budget analyses
- Respond to inquiries and requests for statistical information
- Supply the needed data to study the interaction between the economy and the UI program
- Determine the percentage of claimants returning to work by duration of unemployment by characteristics of claimant
- Follow earnings of claimants before filing a claim and after exhausting benefits

Washington's database is unique in that it requires employers to report hours of work in the quarter. This makes the database more useful than in other states. For example one of the indicators of a labor shortage is the increase in wages offered to newly hired workers. Most published occupational wage rates pertain to the average wage paid and thus would not be as valuable in identifying newly hired workers. From wage records you can identify newly hired workers by comparing their social security number in the current quarter to the social security number of workers that worked in the firm in previous quarters. If the social security number did not appear, for example, for the last four quarters the hire could be classified as a new hire.

In a paper prepared for the Bureau of Labor Statistics in conjunction with the National Wage Record Database project, David Stevens traced the various historical users of wage records for evaluation purposes. Examples of some of the studies included:

- Michael Borus, The Economic Effectiveness of Retraining the Unemployed, 1964
- Malcolm S. Cohen, A Study of On-Line Use of Job Information In Employment Service Local Offices, 1975
- James S. Hanna, Progress Report: Employment Service Potential Project, 1976
- Glen A. Siebert, First Progress Report on the Employment Service Potential Project, 1976
- David Stevens, Unemployment Insurance Beneficiary Job Search Behavior: What is Known and What Should be Known for Administrative Planning Purposes, 1977
- Kathaleen Shaffer, David W. Stevens and Lynda West, Federal Vocational Education Funding and Promotion of Successful Reemployment of Workers' Disability Payment Recipients, 1982
- Robert L. Crosslin and Stephen Wandner, Using the Continuous Wage and Benefit History to Locate Dislocated Workers, 1980
- Charles Trott, Robert Sheets and John Baj, An Evaluation of ETA's PY85, 1985
- Robert Crosslin and David Stevens, The Feasibility of a National Wage Record Data Base, 1989

- William Bowman, Evaluating JTPA Programs for Economically Disadvantaged Adults, 1993

## **Policy Issues**

There are several policy issues that are highlighted in this briefing:

- To whom and how should UI wage records be made available?
- What additional data should be added to UI wage records to make them more useful?
- What efficiencies should be made to the UI reporting system to reduce the burden on respondents?
- What additional resources are needed to make UI data more accurate?
- Should a national Continuous Wage Benefit History (CWBH) file be developed similar to the one started in Washington?

### Who Should have Access to Wage Records and how should that access be provided?

The Bureau Of Labor Statistics has set forth a proposal for developing a National Wage Record Database (NWRD) which seems to be headed in the right direction.

In September 1992, Congress approved legislation requiring the Bureau of Labor Statistics to determine appropriate procedures for the establishment of a national longitudinal wage record database containing information on the quarterly earnings, establishment and industry affiliation, and geographic location of employment for every individual for whom such information is collected and stored by the State Employment Security Agency (SESA) Unemployment Insurance (UI) files. This database is intended to be used primarily for program evaluation and research purposes, but can also be used for eligibility, regulatory or enforcement uses.

In June 1993, BLS obtained funding to develop a design for the NWRD and recently issued a report outlining the major steps necessary to establish such a database. Confidentiality and assuring that the establishment of such a database would not conflict with federal and state confidentiality laws was a major focal point of the report. BLS determined that it was important to separate the statistical use of such data from eligibility, regulatory, or enforcement purposes and thus recommended the design of two separate databases.

Before either database could be established, BLS determined that a new program should be established, in conjunction with State agencies, to ensure the basic quality and standardization of maintenance of the State wage record files. The BLS report outlines concerns that several key data elements, including social security numbers, might be incorrect in the state databases, and the BLS hopes that such a program will reduce errors and enhance the quality of the UI wage record data elements.

The first database would be accessible in a distributed form, with data residing in the owning states but accessible through a consolidated exchange facility. This distributed database would support program evaluation and eligibility/regulatory purposes.

The second database would be centralized and maintained by the Bureau of Labor Statistics. This database would be used for research and statistical purposes. This database would provide an independent and accurate source of employment and earnings information that would be valuable for studying a wide range of issues. This database would store edited data on a time lag basis and would be supplemented with other data on business establishments from the ES-202 program. The BLS envisions the establishment of a separate facility for providing the wage record data to analysts and researchers in a protected manner which ensures confidentiality of sensitive data.

To comply with relevant federal and state statutes, the BLS recommends that legislation authorizing NWRD address who has access to the database and for what purposes, safeguards for disclosed records, and notification to individuals, claimants, and employers of the potential use of their records.

The establishment of a National Wage Record Database would greatly enhance program evaluation and policy research, as well as greatly improving the eligibility, regulatory and enforcement functions of federal and state agencies.

There would be several benefits to evaluating the JTPA and other vocational education programs using NWRD over the conventional practice of telephone surveys. First, there is a substantial cost savings to simply accessing the UI wage record data electronically over the use of labor intensive and costly telephone surveys. Second, UI wage records could be used to track the employment and earnings of individuals over a substantially longer period than telephone surveys which cover a shorter period of time. Third, UI wage records allow evaluators to examine the employment and earnings outcomes of *all* participants in a program rather than just a sample of program completers, allowing for a more accurate analysis of individual service providers. Fourth, with UI data, program evaluation would not depend upon a person's memory about his/her employment and earnings history. In summary, the use of a unified wage record system would allow agencies to gain access to data which are accurate, more complete, and less costly to obtain than are the data currently available.

Policy research would also be greatly enhanced through the use of this disaggregate data. NWRD would allow further research into the underlying forces which cause certain firms, industries, and geographic regions to expand or contract by allowing analysis of less aggregated data. NWRD could be used to explore responses to employment "shocks", evaluate labor turnover at both the individual and firm level, study the ability and extent of worker migration between states, and trace the sequence and consequences of individual human capital patterns. Finally, NWRD would serve as an independent and accurate source of employment and earnings information.

NWRD would enhance current cooperative efforts between Federal and State agencies and the SESAs to determine program eligibility or enforce regulations. Congress currently requires SESAs to aid in the prevention of food stamp fraud by providing the

U.S. Department of Agriculture or relevant state Food Stamp Agency information regarding a person's earnings, unemployment compensation claims, home address, and circumstances of refusal to work. Congress also requires SESAs to relinquish control over confidential administrative records to Federal or State agencies to determine eligibility for AFDC, Medicaid, and other Federal income maintenance programs. Federal law also requires SESAs to transmit earnings and unemployment compensation claim information for absent parents to the U.S. Department of Health and Human Services.

What Additional data should be added to the Wage Record Data base? The addition of additional data requires states to collect additional information from employers. In this environment which stresses no new regulations, the addition of additional data items should be considered only if there is a clear benefit to be derived from the data without imposing a major burden on employers. For example if additional items can be added which would reduce the need for employers to report in other ways, the burden could be cost justified. If additional data provided information which could make federal programs so much more effective or could considerably cut down on fraud, the reporting could be justified. Some of the items missing from the wage record files in most states which would significantly improve the value of the file are:

- Occupation of wage earner
- Hours or weeks worked in quarter
- Location where employee works
- Expanded predecessor/ successor identifiers for the firm
- Uniform definitions of reportable earnings
- Adding federal government employees to coverage

Although I think it would be quite useful to continue to experiment with ways of collecting occupational data, if a national system were implemented the cost of making sure that the data reported is useful could be considerably in excess of \$10 million per year. Each firm has its own occupational classification system. Even the BLS uses different occupational classification systems in its various data collection programs. Unless Congress were willing to make a financial commitment to assuring this information could be collected properly, I would be very skeptical that this data could be cost justified.

Most states merely collect the wages paid to a worker in a given quarter. If a worker started in a firm March 25 and earned \$2,000 per week (\$50 per hour), the worker's wages for the quarter would be \$2,000. We would not know if the worker earned \$50 per hour or if they started March 1 at \$11 per hour or if they started January 1 at \$4 per hour. This requirement would be far less costly for employers to provide than occupation, but we still wouldn't know how many hours were regular hours and how many were overtime involving premium pay or if the pay included a lump sum bonus or vacation pay.

The location of the employee would seem to be the easiest item for the employer to provide and probably the least extensive to edit. The item could be sensitive in that employers may not want to identify where an employee is working.

It would be useful to know more about succession of ownership of firms and establishments within companies. Currently some of that information is collected as part of the ES-202 program, however additional details could be useful.

State laws differ in definitions of reportable wages. These differences are minor and could probably be adjusted by the BLS rather than imposing a burden on employers.

Federal government employees are missing from the wage record files. This can be a very serious problem when evaluating performance (in areas with large federal government employment) of a job training program. If a worker is hired by the federal government after receiving training, it will appear to the analyst that the former participant is without a job. Why should federal government agencies be exempt from the burden private employers face? One argument is confidentiality. We wouldn't want persons to be able to locate where certain Drug enforcement or FBI agents worked. However sensitive workers could be exempted from location or any reporting.

What efficiencies should be made to the UI reporting system to reduce the burden on respondents? It is unlikely that the BLS will be able to persuade OMB to significantly increase the reporting burden on employers. In fact the current directive from the White House is to reduce that burden. ACUC has already recommended the elimination of the FUTA reporting form. The Bureau of Labor Statistics and ICESA should experiment with ways to reduce the burden of reporting by employers even further. Unfortunately, recommending exactly what should be done to reduce the burden is too technical to discuss in this briefing. Any suggestions would require discussion and experimentation to determine what effect the changes have on reporting accuracy and burden. However, to illustrate the types of changes that might lead to improvements in efficiency:

- Combine the ES-202 and wage record reporting in a single form as is done in South Dakota
- Have employers submit wage record lists and have the Employment Security Agency compute a bill and selected ES-202 data based on the wage records.
- Experiment with the elimination of the requirement that employers report employment each month on the report and substitute with quarter beginning and ending concepts which can be computed by subtracting social security accessions in the quarter from wage items. This information could also be combined with new hire reports now required in over 12 states.

All of the above changes are highly controversial and it should be noted that I am only recommending feasibility studies of ways to improve the collection process. If these experiments are not conducted the Department of Labor could find itself in a position of having to make cuts to its programs without the benefit of a systematic study.

What Additional Resources are necessary to improve the UI data system?

Wage records, for example, are collected in order to enable determination of eligibility for Unemployment Insurance. When a claim is made and contested, wage records may be carefully examined. In the vast majority of cases, however, virtually no examination of the wage records is carried out by the Employment Service. Vast new uses of wage records are being contemplated. It only makes sense to allocate resources so the value of the data can match the varying uses being contemplated. Without this investment, much frustration will be created by users who attempt to use poor quality data or data constructed for one purpose that does not meet other purposes for which it is increasingly being used.

Should a national Continuous Wage Benefit History (CWBH) file be developed similar to the one started in Washington? An extensive discussion of the Benefits of a Continuous Wage Benefit History file like the one in the state of Washington was provided. In addition Ging Wong of the Canadian Human Resource Development Department has developed such a file for Canada, which has enabled extensive research to be done on such topics as the effects of changes on the UI benefit level on unemployment, the effects of unemployment on job search and the differences in behavior between recipients who repeatedly use unemployment insurance versus the occasional user.

A Continuous Wage Benefit History file could be developed at a cost of a few million dollars according to Steven Wanderer. It could be of great value in better understanding causes of unemployment. If such a file improved our understanding of unemployment such that a 0.1% unemployment reduction in the insured unemployment rate could be achieved, the investment would have an enormous benefit cost ratio. (a .1% reduction would decrease claims by 100,000. Assuming a \$2,000 cost per claimant, this would be a saving of \$200,000,000. Although the example is totally fictitious, it illustrates how, if a small amount of money spent on research could improve the functionality of the unemployment insurance system, it would be cost effective.

Although the emphasis of this study has been on the use of administrative records, Brian McCall indicated that additional questions could be added to sample surveys which are commonly used by UI researchers and enhance the research that can be done. For example the displaced worker supplement to the Current Population Survey would be an excellent place to add more detail on the month in which a worker lost his /her job and where they were when they lost their job as well as more job history information since they were laid off.

## Appendix A List of Interviews Conducted

FIRST	LAST	TITLE	DIVISION	AGENCY	TYPE
Mary	Hummel	Research Analysis Specialist	Research & Statistics	Minnesota Department of Economic Security	Visit
Theresa	Van Hoomissen	Assistant Director	Research & Statistics	Minnesota Department of Economic Security	Visit
Med	Chottepanda	Director	Research & Statistics	Minnesota Department of Economic Security	Visit
Shirley	Goetz	Director	Labor Market & Demographic Research	State of New Jersey Department of Labor	Telephone
Paula	Duggan	Senior Policy Analyst		Northeast Midwest Institute	Telephone
Thomas	Plewes	Associate Commissioner		Bureau of Labor Statistics	Visit
David	Stevens	Executive Director	The Jacob France Center Merrick Business	School of Business ** University of Baltimore	Telephone
Stephen	Wandner	Deputy Director	Office of Legislation and Actuarial **Services	Unemployment Insurance Service	Visit
Lynne	Webb			Unemployment Insurance Service	Telephone
Ging	Wong	Director	Insurance Programs Directorate Program	Human Resources Development Canada	Telephone
Sharon	Brown	Chief	Local Area Unemployment	Bureau of Labor Statistics	Visit
Michael	Searson	Senior Economist		Bureau of Labor Statistics	Visit
Von	Logan	Deputy Director	Financial & Management Services	Michigan Employment Security Commission	Visit
Abel	Feinstein	Manager	Labor Market Research	Michigan Employment Security Commission	Visit
Gary	Bodeutsch	Director	Labor Market Information	Washington State Employment Security Department	Telephone
Rena	Kottcamp	Director	Research Division	Massachusetts Division of Employment Security	Telephone
Cheryl	Templeman	Director	Unemployment Insurance	Interstate Conference of Employment Security Agencies	Telephone
Cynthy	Ambler			Unemployment Insurance Service	Telephone
Brian	McCall	Assistant Professor	Industrial Relations Center	Carlson School of Business University of Minnesota	Visit
Vivien	Shapiro	Assistant Commissioner	Research Analysis and Evaluation	State of New Jersey Department of Labor	Telephone
James	Phillips	Director	Program Planning, Analysis & Evaluation	State of New Jersey Department of Labor	Telephone
Laurence	Seidel	Staff Director		NJ Occupational Information Coordinating Committee	Telephone

### Appendix B List of Federally Required UI Reports

Number	Description
67	WIN--Program Status
191	Statement of Expenditures and Financial Adjustments
202	Employment, Wages and Contributions Report
203	Characteristics of the Insured Unemployed
204	Experience Rating Report
205	Preliminary Estimates of Average Employer Contribution Rate
207	Nonmonetary Determination Report
209D	Local Office Directory Changes
218	Benefit Rights and Experience
223	In-Season Farm Labor Report
227	Overpayment Detection and Recovery Activity
228	Report of Work Stoppages
232	Domestic Agricultural In-Season Wage Report
235	Report of Mass Layoff
244	Status of Obligational Authority
266	Reconciliation of Liability to ETA
532	Payment Activities Under the Disaster Relief Act of 1974
538	Advance Weekly Initial and Continued Claims Report
539	Extended Benefit Data
563	Trade Readjustment Allowance Activities and Employability Services
581	Contribution Operations
586	Interstate Agreement for Combining Employment & Wages
902	Disaster Unemployment
2112	UI Financial Transaction Summary
5210	Weekly Claims and Extended Benefits Trigger Data
5130	Benefit Appeals Report
5157	Apprenticeship Information Centers Monthly Report
5159	Claims and Payment Activities
8401	Monthly Analysis of Benefit Payment Account
8403	Summary of Financial Transactions - Title IX Funds
8405	Monthly Analysis of Clearing Account
8413	Income-Expense Analysis, UC Fund, Benefit Payment Account
8414	Income-Expense Analysis, UC Fund, Clearing Account
9000	Internal Security
9016	Alien Claimant Activity Report
9048	Worker Profiling and Reemployment Services Activities

## Appendix C - Description of Major UI Reports and Program uses

### The Covered Employment and Wages Program (ES-202)

The Covered Employment and Wages program (ES-202) is a cooperative endeavor of the Bureau of Labor Statistics and the employment security agencies of the U.S. States and territories (including the District of Columbia). BLS uses data submitted by the agencies to summarize employment and wage data for workers covered by State Unemployment Insurance (UI) laws and for civilian workers covered by the program of Unemployment Compensation for Federal Employees (UCFE).

The ES-202 program is a comprehensive and accurate source of employment and wage data, by industry, at the national, State, and county levels. Unlike many other statistical data series, the ES-202 program covers a broad universe rather than a sample population. The scope of its coverage is in line with the scope of employees covered by UI or UCFE, which in 1991 covered 98 percent of total wage and salary civilian employment. It currently includes anyone employed by a private firm, Federal employees and ex-military personnel, virtually all State and local public employees, less than half of those employed by agricultural firms, and some domestic workers. Excluded are just over half of all agricultural employees, all of the self-employed, some domestic workers and all unpaid family workers, members of the Armed Forces, those covered by the railroad unemployment insurance system, some State and local government employees, and some nonprofit employers.

The ES-202 program collects data on an *establishment* basis, defined as an economic unit which produces goods or provides services. It is usually in a single physical location and engaged in predominantly one type of economic activity for which a single industry classification may be applied. Most employers have only one establishment; thus, the establishment is the predominant reporting unit or statistical entity for reporting employment and wage data. When a single physical location encompasses two or more distinct and significant activities, each is defined as a separate establishment and the employer is required to file a Multiple Worksite Report (MWR).

The ES-202 employment data represent the number of workers on the payroll during the pay period including the 12th day of the month. Workers are reported in the State and county of the physical location of their job rather than their place of residence. Because the data is collected by establishment, persons on the payroll of more than one firm are counted in *each* firm. The employment count includes persons on paid sick leave, holiday or vacation, but excludes employees who earned no wages during the pay period because of work stoppages, temporary layoffs, illness, unpaid leave or vacation, and those who earned wages during the month but not during the applicable pay period.

The ES-202 total wage data is collected each quarter and in most states includes gross wages and salaries, bonuses, tips and other gratuities, and the value of meals and lodging, where supplied. In the majority of states, employers contributions to certain deferred

compensation plans are also included. The total wage data excludes employer contributions to Old-age, Survivors', and Disability Insurance (OASDI); health insurance; unemployment insurance; workers' compensation; and private pension and welfare funds.

In the ES-202 program, statewide classification of industries using the 1987 Standard Industrial Classification Manual is mandated at the 4-digit level. Industrial codes are assigned by State agencies to each reporting unit based on responses to questionnaires in which employers indicate their principal product or activity. In order to insure the highest possible quality of data, BLS and the States verify and update the SIC, location, and ownership classification of all units on a 3-year cycle. Government units in the public administration industry division are verified on a 5-year cycle.

Individual State agencies are responsible for collecting, coding and summarizing the raw data from the Unemployment Insurance Contribution Reports and Multiple Worksite Reports; checking for missing information and errors; imputing data for delinquent reports; and machine processing the data onto magnetic tapes. These tapes arrive at BLS five months following the end of each quarter. To assure accuracy, BLS edits the data each quarter and asks State agencies to review questionable entries and provide updates or explanations where necessary.

ES-202 data are published annually by BLS in *Employment and Wages*. This publication presents State and national totals for covered employment and wages by broad industry division, major industry group, and detailed 4-digit industry. BLS withholds publication of data for any geographic industry level which could disclose information pertaining to an individual firm. In addition to published information, county and metropolitan data and historical information are available.

The ES-202 program provides data necessary to both the Employment and Training Administration and the various State employment security agencies in administering the employment security program. The data are used to measure UI revenues; National, State, and local area employment; and total and taxable wage trends. The information is used as an input for actuarial studies, determination of experience ratings, maximum benefit levels, and areas needing Federal assistance. The data are also used to measure the solvency of unemployment insurance funds.

The ES-202 data also serve as the basic source of benchmark information for the Current Employment Statistics program and The Unemployment Insurance Name and Address File. The Bureau of Economic Analysis (U.S. Department of Commerce) uses the wage data as a base for estimating a large part of the wage and salary component of national income and gross domestic product, which is in turn used by the Federal government to allocate program grants to State and local governments. The Social Security Administration and State governments use the data in updating economic assumptions and forecasting trends in their taxable wage base. Finally, the data are used extensively by business and public and private research organizations.

## **Characteristics of the Insured Unemployed (ES-203)**

The Characteristics of the Insured Unemployed (ES-203) program is administered by the Bureau of Labor Statistics using data submitted monthly by the States. Those states reporting fewer than a specified number of weeks of unemployment claims must submit data on all weeks claimed; those above the threshold may submit a statistical sample as specified by BLS.

The program collects data on individuals filing continued weeks claimed of Unemployment Insurance, including the type of claim, number of weeks claimed, current duration of unemployment, age, gender, race, industry affiliation, and occupation.

The data are published monthly in *Unemployment Insurance Statistics* and annually in the *Handbook of Labor Statistics and Employment and Training Report of the President*.

The primary use of the ES-203 program is to provide data by State and for the U.S. on characteristics of the insured unemployed. These data are used by the Employment and Training Administration \*\* for use in promoting employment opportunities, improving utilization of human resources, alleviating unemployment through studies of its causes, guiding related government policies, evaluating the UI program and developing recommendations for changes, and improving public information and understanding.

The data are also used for these and other purposes by State agencies, unions, businesses, business and labor advisory groups, Federal Reserve Board and Banks, Council of Economic Advisers, National Science Foundation, Bureau of Labor Statistics, researchers and students.

## **Weekly Report of Claims-Taking Activities (ETA 5-210)**

The Weekly Report of Claims-Taking Activities (ETA 5-210) uses data submitted weekly by the States, including some separate data for selected labor market areas or segments of States one week each month.

The weekly report contains data on initial claims and continued weeks claimed (State UI, UCFE, UCX, Extended Benefit programs). The report also includes comments on the effects of employment "shocks" such as labor disputes, natural disasters and energy shortages on employment and unemployment. Total insured unemployment for selected labor areas is reported one week per month.

The data are published weekly in *Unemployment Insurance Claims*; monthly in *Unemployment Insurance Statistics*, *Business Conditions Digest*, *Social Security Bulletin*, and *Employment and Earnings*; and annually in *Handbook of Unemployment Insurance Financial Data*, *Employment and Training Report of the President*, and *Statistical Abstract of the United States*.

The data are used by the Employment and Training Administration for current analysis of insured unemployment trends and for public information. The data are also used by State agencies, Council of Economic Advisers, Bureau of Labor Statistics, Federal Reserve Board, U.S. Department of Commerce, researchers and consultants. The data are also used to determine the Leading Economic Indicators.

## **Extended Benefit Data (ETA 5-39)**

Extended Benefit Data (ETA 5-39) summarizes data submitted weekly by the States.

The ETA 5-39 report includes data on weeks claimed of State Unemployment Insurance; regular, Federal-State UI extended and State UI extended additional compensation; average adjusted total continued weeks claimed; covered employment; rate of insured unemployment; average rate of insured unemployment for the prior two years and the current rate as a percent of average rate for the prior two years.

The data are used by the Employment and Training Administration to determine the initiation, continuance or termination of an extended benefit period in any State by reason of the State trigger and of a national on/off trigger. The data are also used by State agencies, researchers and consultants.

## **Measurement of Employment in States and Local Areas**

Unemployment estimates for States and local areas are key indicators of local economic conditions and are used extensively by Federal, State and local government agencies. Under the Federal-State cooperative program, the Department of Labor develops the concepts, definitions, and technical procedures which are used by State agencies for the preparation of labor force and unemployment estimates. Known as the Local Area Unemployment Statistics (LAUS) program, data from each State's UI data base are used to yield monthly estimates of unemployment and employment for all States, all labor market areas, and counties and cities having a population of 25,000 or more.

The Bureau of Labor Statistics relies upon a State-based design for the Current Population Survey (CPS) of appropriate sample size conducted each month to determine official statewide labor force estimates for the 11 largest States (California, Florida, Illinois, Massachusetts, Michigan, New Jersey, New York, North Carolina, Ohio, Pennsylvania, and Texas) and for 2 sub-State areas (Los Angeles-Long Beach MSA and New York City).

BLS estimates of statewide labor force statistics for the remaining 39 States and the District of Columbia are based upon time series models developed by BLS and tested by State employment security agencies using standardized procedures. Separate regression models are used to determine employment levels and unemployment rates, and each year, monthly State employment and unemployment estimates prepared by State employment security agencies using these models are benchmarked to the annual average CPS State estimates of employment and unemployment.

Sub-State estimation of unemployment and employment are conducted using the "Handbook" method. This effort to estimate unemployment for an area is comparable to what would be produced by a random sample of households in the area but relies upon available information to avoid the expense of a large labor force survey. These estimates

of employment and unemployment rely on estimates of those who were last employed in industries covered by State UI laws, those who were last employed in noncovered industries, and those who either entered or reentered the labor force.

Covered unemployment for sub-State estimates is further broken down into four categories: those currently collecting UI benefits, those who have exhausted their benefits, those who have been disqualified from receiving benefits, and those who have delayed filing for benefits. Estimates of covered unemployment rely on actual counts of those currently collecting UI benefits and the use of special estimating equations to estimate counts for the other three categories, which rely on actual and estimated data.

Sub-State estimates of uncovered employment are based primarily on the application of the State-covered unemployment rate to estimates of current employment for each noncovered industry or class-of-worker subgroup.

Sub-State estimates of new entrants and reentrants into the labor force are based on the national historical relationship of entrants to the experienced unemployed and the experienced labor force.

Sub-State estimates of total employment are based primarily on surveys of establishments, either directly from the Federal-State Current Employment Statistics (CES) survey or by the States themselves. These employment estimates of nonfarm industries are adjusted using data from the most recent decennial census.

All of these data are adjusted monthly to ensure that sub-State areas sum to the State total estimates and are benchmarked each year.

Because some Federal programs require estimates of employment and unemployment on a sub-LMA basis, BLS estimates sub-LMA labor statistics using either current Bureau of the Census estimates of population or decennial census employment and unemployment counts.

BLS surveys individual State data bases through the UI Data Base Survey to assure that data used in LAUS estimates meets BLS standards. The UI Data Base Survey helps to verify whether currently existing LAUS UI data bases meet standards for unduplicated and complete claimant data, and aids BLS in determining elements that are inappropriately defined, not available, missed, or insufficient.

Estimates of unemployment and unemployment rates are used by Federal agencies to determine area eligibility for benefits in various Federal programs. The unemployment data are used in many programs to determine the distribution of funds to be allocated to each eligible area. Under the Emergency Unemployment Compensation Act, the State total unemployment rate is one of two triggers for paying extended unemployment benefits.

# **UNEMPLOYMENT INSURANCE: PUBLIC VIEWS**

**by Stacey G. Grundman**

**January 1996**

Stacey G. Grundman is a policy analyst for the Advisory Council on Unemployment (ACUC) Compensation. The views expressed herein are those of the author and do not necessarily reflect the views of the members of the ACUC.



## UNEMPLOYMENT INSURANCE: PUBLIC VIEWS

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The Advisory Council on Unemployment Compensation contracted with The Gallup Organization and Fu Associates to conduct a nationally-representative survey to assess public attitudes towards the Unemployment Insurance (UI) System. The Gallup Organization conducted the survey of 1,206 adults in the United States in July and August of 1995. The findings discussed in this paper are based on the author's analysis of the survey results compiled by Gallup.

Ten survey questions dealing with participants' views about the UI system were cross tabulated by various demographic and personal characteristics (also called classification variables).<sup>1</sup> For each cross-tabulation, a Pearson Chi-Square statistic was calculated to determine whether the actual frequency of responses across categories of the classification variable were significantly different from the frequencies that would be expected if the characteristics were independent from the participants views.<sup>2</sup>

### **EXPERIENCE WITH THE UNEMPLOYMENT INSURANCE SYSTEM: WHO APPLIES FOR BENEFITS?**

Participants in the survey were asked a number of questions about their employment history and their experiences with the unemployment insurance system. Almost half (46%) of the participants reported that they had been unemployed at some point in their life *other than when [they] were student[s] or when [they] might have chosen not to work outside the home*. Two-thirds (66%) of the people who had been unemployed reported that they had applied for unemployment insurance benefits and most of them (89%) actually received benefits.

People who reported having been unemployed but not applying for benefits were asked why they had not applied. This question was open-ended (it did not provide explicit response categories for the participants) in order to capture as many responses as possible.<sup>3</sup> The most frequent response, that the individual had found another job, was mentioned by 24 percent of the

respondents. Fourteen percent reported that they did not apply because they did not think they were eligible for benefits. Another eight percent reported that they were unfamiliar with the unemployment insurance system or that they did not know that they could apply for benefits.<sup>4</sup>

In addition to the reasons for not applying mentioned above, there are demographic and other personal characteristics that seem to influence the decision for unemployed people to apply for benefits. Results of this question were cross-tabulated against demographic characteristics, union membership, participants' views of UI as earned insurance or welfare, and if they knew people outside their family who had collected benefits.<sup>5</sup> Advisory Council on Unemployment Compensation Significant results are mentioned below. A more detailed summary of responses by category, including those that were not significant, is contained in Table 1.

- Older respondents (74% of those aged 35-54 and 72% over age 54) were more likely to report that they had applied for benefits than younger respondents aged 18-34 (51%).
- A higher percentage of men (73%) than women (61%) who had experienced unemployment reported having applied for benefits.
- Respondents earning \$25-45,000 (73%) were more likely to report that they had applied for benefits than respondents in other income categories. Those with slightly higher earnings \$45-75,000 (70%), were more likely to report that they had applied than those earning less than \$25,000 (63%) or more than \$75,000 (49%).
- Union members (81%) were more likely to report that they had applied for benefits than non-union members (66%).
- Divorced, separated, or widowed respondents (75%) were more likely than married (67%) or single (55%) respondents to report that they had applied for benefits
- Respondents who viewed UI benefits as earned insurance were more likely (71%) to file than those who viewed them as part of the welfare system (42%).
- Respondents who knew someone outside their immediate family who had received UI benefits (72%) were more likely to report that they had applied for benefits than those who did not (53%).

TABLE 1. Applicants for UI Benefits

Classification Variable	Percent of people who have been unemployed who applies for UI benefits (n=550)	Classification Variable	Percent of people who have been unemployed who applies for UI benefits (n=550)
Total	66.2	Race	
Age		Hispanic	63.0
18-34	<b>50.5</b>	White	65.6
35-54	<b>73.5</b>	Black	77.2
55+	<b>71.5</b>	Other <sup>1</sup>	50.0
Sex		Marital Status	
Male	<b>72.6</b>	Single	<b>54.8</b>
Female	<b>60.5</b>	Married	<b>66.7</b>
Education		Other <sup>2</sup>	<b>75.3</b>
HS or less	70.5	Union Member	
Some College	66.4	Yes	<b>80.6</b>
College	59.5	No	<b>65.6</b>
Income		View of UI	
<25K	<b>63.0</b>	Earned Insurance	<b>71.1</b>
25<45	<b>73.2</b>	Welfare	<b>42.4</b>
45<75	<b>70.2</b>	Know People Who Have Collected UI	
75+	<b>48.8</b>	Yes	<b>71.6</b>
		No	<b>52.5</b>

NOTE: Responses that are statistically significant different across classification variables are indicated in bold.

<sup>1</sup> Asian, Native American, or other race.

<sup>2</sup> Divorced, separated, or widowed.

## **Regression Analysis and Results**

Logistic regression also was used to estimate the individual influence of the characteristics described above on a respondents' decision to apply for UI benefits. Again, only cases in which the respondent had reported a history of unemployment were included. The dependent variable used in the analysis was whether the respondent had applied for UI benefits. The independent variables used were the classification variables in Table 1 as well as survey participants' views of the importance of benefits as a source of income.<sup>6</sup> The results indicate that respondents who are (1) male, (2) black, or (3) widowed, separated or divorced are significantly more likely to apply for benefits. In addition, survey participants who viewed UI as earned insurance as opposed to welfare, knew people outside their families who had collected UI benefits, or believed that benefits were an important source of income to the families that receive them were also significantly more likely to apply. Specific regression results, including the log odds ratios and significance levels, are presented in Table 2. The log odds ratio represents the likelihood that a person will apply for benefits if the observed independent variable is changed while all other independent variables are held constant. For example, according to the logistic results, people who know someone outside the family who has collected UI benefits are 2.5 times more likely to apply for benefits than those who do not.

**TABLE 2. Applicants for Benefits: Logistic Regression Results**

<b>Independent Variable</b>	<b>Log Odds Ratio</b>
Age	1.02 (.08)
Male	1.55 (.05)
Education	0.84 (.24)
Income	1.02 (.80)
Union	1.82 (.09)
Race	
Black	2.33 (.03)
Hispanic	1.15 (.83)
Asian, Native American, Other	1.07 (.92)
Marital Status	
Married	1.67 (.07)
Divorced, Separated, Widowed	2.67 (.00)
View UI as Earned Insurance	2.93 (.00)
Know People Who Have Collected UI Benefits	2.50 (.00)
Importance of Benefits	1.41 (.03)

NOTES: n=463. Significance levels are reported in parentheses.

## **The Role of Knowledge of the UI System**

Additional examination of the role of knowledge or understanding of the unemployment insurance system on people's decision to apply for benefits may prove illuminating. Theoretically, familiarity with the application process or an understanding of the benefits available would encourage the unemployed to apply. This survey, however, asked only people who reported having applied for benefits about their level of knowledge of the UI system. Knowing people who have received benefits may, however, be representative of a person's familiarity or knowledge of the system.

Survey results parallel other UI data indicating that a greater percentage of unemployed workers who are members of labor unions apply for UI benefits than non-union members.<sup>7</sup> This survey, however, does not provide an explanation for this result. It may be that union members who are laid off are more frequently provided with information about the availability of UI benefits and assisted with the application process by the union. It is not possible to measure accurately differences in levels in knowledge between union and non-union members because survey results include this information only for participants who have applied for benefits.

## **VIEWS ON ELIGIBILITY**

### **Monetary Eligibility Requirements**

Eligibility for UI benefits is restricted to individuals who have a demonstrated attachment to the labor force. In most states, this labor force attachment is measured by earnings during a defined time period relative to the individual's job separation. This survey asked questions designed to elicit views on whether this type of work force attachment measure is fair, whether people think that length of time worked is a more appropriate measure, or whether they believe that labor force attachment should not be the basis for eligibility at all. Participants were asked, *"Should eligibility for unemployment benefits be based on how much individuals have worked or on how much they earn or should eligibility be based on something else like age or economic need?"* The most frequent response given was that eligibility should be based on how much an individual has worked (36%). About a quarter of participants thought that eligibility should be based on earnings (27%) or on economic need (25%).

The chi-square statistics were significant for cross-tabulations of this question by gender, education, unemployment history, whether survey participants know people who have collected UI benefits, and whether they view UI as earned insurance as opposed to welfare. The greatest variation is seen in the distribution of respondents who believe that eligibility should be based on how much an individual has earned. Some of the results are presented below. More details are provided in the first three columns of Table 3.

- A larger percentage of men (31%) than women (23%) believe that eligibility should be based on how much an individual has earned.
- A larger percentage of survey participants with a high school education or less (33%) than those with some college (22%) or college graduates (24%) believe that eligibility should be based on how much an individual has earned.
- A larger percentage of survey participants who reported having been unemployed (30%) than those who had not (24%) believe that eligibility should be based on how much an individual has earned.
- A larger percentage of people who viewed UI benefits as earned insurance (29%) as opposed to welfare (21%) believed that eligibility should be based on how much an individual has earned.

In addition, some variation was evident across the various classification variables for other responses to this question.

- A larger percentage of women (37%) than men (34%) believe that eligibility for UI benefits should be based on how much an individual has worked.
- About 22 percent of survey participants with a high school degree or less compared to 27 percent of those who with college degrees believed that eligibility for UI benefits should be based on economic need.
- Survey participants who had never been unemployed (38%) were more likely than those who had been unemployed (33%) to believe that eligibility for UI benefits should be based on how much an individual has worked.

- Similarly, about 37 percent of participants who knew people who had collected UI benefits and only 33 percent of those who did not believed that eligibility for UI benefits should be based on how much an individual has worked.
- Finally, 23 percent of people who viewed UI benefits as earned insurance and 30 percent of people who viewed it as part of the welfare system believed that eligibility should be based on economic need.

TABLE 3. Views on Eligibility

Classification Variable	Should eligibility for unemployment benefits be based on how much an individual has worked, or on how much they earn, or should eligibility be based on something else like age or economic need? (n=1206)			For a full-time job, how long a period of time should a person have to work before they would be eligible for UI benefits? (n=417)	
	% how much they have worked	% how much they have earned	% economic need	% less than 1 year	% 1 year
Total	35.6	26.6	24.6	27.3	37.3
Age					
18-34	36.0	25.1	27.4	34.2	36.0
35-54	37.2	27.6	21.7	20.2	39.1
55+	31.7	27.3	26.8	28.5	36.8
Sex					
Male	34.1	30.9	23.5	28.5	35.1
Female	37.0	22.8	25.6	26.4	39.1
Education					
HS or less	36.0	33.1	21.7	32.2	36.2
Some College	36.7	22.4	25.3	23.2	34.4
College	34.1	24.1	27.3	26.5	41.8
Income					
<25K	33.2	30.6	27.2	32.7	28.7
25<45	39.7	24.8	23.1	29.8	39.8
45<75	36.0	23.3	25.5	23.3	43.0
75+	32.7	27.4	22.1	14.2	36.4

Table 3. (continued)

Classification Variable	Should eligibility for unemployment benefits be based on how much an individual has worked, or on how much they earn, or should eligibility be based on something else like age or economic need? (n=1206)			For a full-time job, how long a period of time should a person have to work before they would be eligible for UI benefits? (n=417)	
	% how much they have worked	% how much they have earned	% economic need	% less than 1 year	% 1 year
<b>Race</b>					
Hispanic	36.0	38.0	8.0	46.7	40
White	36.0	25.7	25.1	25.7	39.1
Black	36.7	31.9	21.3	37.6	26.7
Other <sup>1</sup>	18.9	26.4	39.6	14.3	00.0
<b>Marital Status</b>					
Single	35.6	26.0	26.9	33.3	28.6
Married	36.0	27.1	22.7	25.2	42.4
Other <sup>2</sup>	34.0	26.3	27.4	26.7	33.9
<b>Union Member</b>					
Yes	34.6	33.6	19.9	35.1	25.6
No	35.9	25.5	25.5	31.0	39.4
<b>Ever Unemployed</b>					
Yes	<b>33.4</b>	<b>30.1</b>	<b>23.9</b>	32.7	39.0
No	<b>37.5</b>	<b>23.7</b>	<b>25.3</b>	23.4	36.0
<b>Knows People Who Have Collected UI</b>					
Yes	<b>36.6</b>	<b>25.8</b>	<b>24.8</b>	<b>30.6</b>	<b>38.9</b>
No	<b>33.3</b>	<b>28.4</b>	<b>24.2</b>	<b>19.7</b>	<b>32.8</b>
<b>View of UI</b>					
Earned Insur.	<b>35.6</b>	<b>29.0</b>	<b>22.9</b>	<b>30.9</b>	<b>39.7</b>
Welfare	<b>36.9</b>	<b>21.0</b>	<b>30.0</b>	<b>17.3</b>	<b>31.3</b>

NOTE: Responses that are statistically significant different across classification variables are indicated in bold.

<sup>1</sup> Asian, Native American, or other race.

<sup>2</sup> Divorced, separated, or widowed.

Among the survey participants who believed that eligibility should be based on how much individuals have worked (n=417), almost two-thirds (65%) believe that individuals should not have to work more than 1 year to be eligible for UI benefits. The variation of observed responses from expected responses is significant for two classification variables.

- Among survey participants who believed UI eligibility should be based on how much a person has worked, a greater percentage of those who know people who have received unemployment benefits (70%) than those who do not (53%) believe that no more than a year of work should be required.
- For the same group of survey participants, a greater percentage of those who view UI as earned insurance (71%) than those who view it as part of the welfare system (49%) believe that no more than a year of work should be required.

Regression analysis of this group's views on how long people should work in order to be eligible for UI benefits indicates that there are four significant predictive variables: age, whether they had been unemployed in the past, whether they knew people who had collected unemployment insurance benefits, and how important they viewed unemployment insurance benefits. As shown in Table 4, participants who are younger, had been unemployed, knew others who collected benefits, or viewed unemployment benefits as an important source of income to the families that receive them indicated that a shorter period of work should be required when all other factors in the model are held constant. For example, a 10 year increase in the age of the survey participants would produce a .18 year increase in the length of time that the respondent believes should be required.

TABLE 4. Work Requirements: Regression Results

Independent Variable	
Age	0.02 (.03)
Male	0.12 (.47)
Education	-0.08 (.58)
Income	0.06 (.36)
Union	-0.19 (.58)
Ever Unemployed	0.44 (.05)
Race	
Black	-0.36 (.31)
Hispanic	-0.99 (.15)
Asian, Native American, Other	1.14 (.27)
Marital Status	
Married	-0.48 (.10)
Divorced, Separated, Widowed	-0.15 (.67)
View UI as Earned Insurance	-0.39 (.13)
Know People Who Have Collected UI Benefits	-0.82 (.00)
Importance of Benefits	-0.36 (.01)
R-squared	.09

NOTES: n=417. Significance levels are reported in parentheses.

## **Nonmonetary Eligibility Issues**

In order to be eligible for UI benefits, unemployed workers must meet a number of nonmonetary conditions. Individuals are required to demonstrate (1) an ability to seek and accept suitable work and (2) that there are no disqualifications related to the individual's most recent job separation.<sup>8</sup> Survey participants were asked if they agreed or disagreed with specific statements that present positions on a variety of issues related to these nonmonetary requirements. The results, in brief, follow.

- Almost half (47%) of the survey respondents agreed somewhat or agreed strongly that a person should be eligible for UI benefits if their employer changes their work hours and the person is not able to work those hours.
- Three-quarters (75%) of the survey respondents agreed somewhat or agreed strongly that a person should be eligible for UI benefits if they leave their job because of a family crisis (for example, a child becomes seriously ill).
- More than a third (37%) of the survey respondents agreed somewhat or agreed strongly that a person should be eligible for UI benefits if they leave their job because their spouse has been transferred to or accepted a new job in a different region of the country.
- More than a third (38%) of the survey respondents agreed somewhat or agreed strongly that people who receive UI benefits should be required to accept ANY job they are offered.

Age, education, unemployment history, and views of UI benefits as earned income or welfare seem to have a profound influence on peoples' views on all of these issues. The response patterns as well as additional significant variables, however, vary from issue to issue. The only consistent trend that emerges is that survey participants who have been unemployed in the past and those who view UI benefits as earned insurance seem to support less restrictive eligibility requirements. For example, compared to survey participants who have never been unemployed (44%), a higher percentage of survey participants who have been unemployed (51%) agree that a person should be eligible for UI benefits if their employer changes their work hours and the person is not able to work those hours. A higher percentage of this group also agree that a

person should be eligible for UI benefits if they leave their job because of a family crisis (78% compared to 73% of those who have never been unemployed) and that they should be eligible if they leave their job because their spouse has been transferred to or accepted a new job in a different region of the country (41% compared to 34% of those who have never been unemployed.). Conversely, compared to survey participants who have never been unemployed (43%), a smaller percentage of those who have been unemployed (32%) agree that people who receive UI benefits should be required to accept ANY job they are offered. A similar pattern exists for people who view UI benefits as earned insurance.

Cross-tabulations of responses to the statement regarding changes in work hours produced significant chi-squares for age, gender, education, unemployment history, view of UI benefits as earned insurance or welfare, and marital status. All except marital status were also significant for responses to the statement on family crisis. Income was also significant for this statement. For the remaining statements dealing with the transfer of a spouse and a requirement to accept any job, age, education, income, unemployment history, whether survey participants knew people who had collected UI benefits, and their views on UI benefits as earned insurance or welfare were all significant. Selected results are discussed below. Detailed responses to each of the four statements by demographic and other personal characteristics are summarized in Table 5.

### ***Changes in Work Hours***

- Women (49%) are more likely than men (45%) to agree that a person should be eligible for UI benefits if their employer changes their work hours and the person is not able to work those hours.
- Participants with high school education or less are more likely to agree that a person should be eligible for UI benefits if their employer changes their work hours and the person is not able to work those hours (50%) than people with some college (47%) or college graduates (44%).
- Divorced, separated, or widowed respondents (51%) are more likely to agree that a person should be eligible for UI benefits if their employer changes their work hours and the person is not able to work those hours than married respondents (45%).

- Participant who view UI benefits as earned insurance (49%) are more likely to agree that a person should be eligible for UI benefits if their employer changes their work hours and the person is not able to work those hours than are those who view UI as welfare (39%).

### ***Family Crisis***

- Younger respondents are more likely to agree that a person should be eligible for UI benefits if they leave their job because of family crisis. Eighty-three percent of 18-34 year-olds agreed with this statement compared to 72 percent of those 35-54 years old and 71 percent of those 55 and older.
- Women (79%) are more likely to agree that a person should be eligible for UI benefits if they leave their job because of family crisis than men (72%)
- Respondent with high school education or less (81%) are more likely to agree that a person should be eligible for UI benefits if they leave their job because of family crisis than are respondents with some college (77%) or college graduates (68%).
- Low income respondents earning less than \$25,000 per year (81%) are more likely to agree that a person should be eligible for UI benefits if they leave their job because of family crisis than are people with higher income levels. Sixty-one percent of those earning over \$75,000 per year agree with the statement.

### ***Moving to Different Region***

- A greater percentage of respondents with a high school education or less (43%) agreed that a person should be eligible for UI benefits if they leave their job because their spouse has been transferred to or accepted a new job in a different region of the country than respondents with some college (39%) or college graduates (29%).
- Respondents who knew people outside their families who had received benefits (35%) were less likely to agree that a person should be eligible for UI benefits if they leave their job because their spouse has been transferred to or accepted a new job in a different region of the country than those who did not (41%).
- People who view UI benefits as earned insurance are more likely to agree that a person should be eligible for UI benefits if they leave their job because their spouse has been

transferred to or accepted a new job in a different region of the country (39%) than those who view UI as part of the welfare system (31%).

***Acceptance of Any Job***

- Respondents over age 55 (42%) are more likely to agree that people who receive UI benefits should be required to accept any job they are offered than are younger respondents (32%).
- Respondents with a high school or less education (45%) are more likely to agree that people who receive UI benefits should be required to accept any job they are offered that are those with some college (36%) or college graduates (32%).
- Respondents earning less than \$25,000 a year (41%) are more likely to agree that people who receive UI benefits should be required to accept any job they are offered than people with higher incomes. Those earning more than \$75,000 a year are least likely to agree with this statement (28%).
- Respondents who knew people outside the family who collected UI benefits are less likely to agree that people who receive UI benefits should be required to accept any job they are offered (33%) than those who do not (49%).

TABLE 5. Percent of Respondents Who Agree with Specified Nonmonetary Requirements

	New Hours (% agree)	Family Crisis (% agree)	Moving (% agree)	Accept Any Job (% agree)
Total	47.2	75.3	37.3	37.9
<b>Age</b>				
18-34	49.2	82.9	34.4	31.7
35-54	45.1	71.9	38.3	32.4
55+	48.1	71.1	39.2	41.7
<b>Sex</b>				
Male	45.4	71.5	36.0	37.8
Female	48.7	78.6	38.4	38.0
<b>Education</b>				
HS or less	50.2	80.5	42.8	45.3
Some College	47.1	76.5	39.1	36.0
College	43.9	68.1	29.1	31.8
<b>Income</b>				
<25K	51.2	80.5	43.4	41.3
25<45	48.3	76.7	38.3	39.8
45<75	46.3	75.2	30.8	34.7
75+	38.6	61.0	32.5	28.1
<b>Race</b>				
Hispanic	55.1	77.6	44.9	40.0
White	47.1	73.4	35.6	37.1
Black	43.7	85.9	48.6	42.4
Other <sup>1</sup>	53.6	90.9	38.9	42.9
<b>Marital Status</b>				
Single	49.1	78.6	34.8	41.1
Married	44.8	73.6	36.4	36.7
Other <sup>2</sup>	51.1	75.9	41.6	36.7

TABLE 5. (continued)

	New Hours (% agree)	Family Crisis (% agree)	Moving (% agree)	Accept Any Job (% agree)
<b>Union Member</b>				
Yes	47.8	74.7	37.5	36.4
No	46.8	75.4	37.0	37.6
<b>Ever Unemployed</b>				
Yes	<b>51.1</b>	<b>78.0</b>	<b>41.1</b>	<b>32.2</b>
No	<b>43.8</b>	<b>72.9</b>	<b>34.1</b>	<b>42.8</b>
<b>Knows People Who Have Received UI</b>				
Yes	47.7	73.3	<b>35.2</b>	<b>32.8</b>
No	45.8	79.3	<b>41.1</b>	<b>48.6</b>
<b>View of UI</b>				
Earned Insurance	<b>49.4</b>	<b>77.1</b>	<b>39.3</b>	<b>34.2</b>
Welfare	<b>39.0</b>	<b>68.7</b>	<b>30.8</b>	<b>49.7</b>

NOTE: Responses that are statistically significant different across classification variables are indicated in bold.

<sup>1</sup> Asian, Native American, or other race.

<sup>2</sup> Divorced, separated, or widowed.

Generally, nonmonetary eligibility requirements are set by the states and vary significantly across states. A survey of states conducted by the Interstate Conference of Employment Security Agencies (ICESA) provides the most current and comprehensive state by state information on UI nonmonetary eligibility requirements.<sup>9</sup> While the circumstances described in the state survey do not parallel the public opinion survey exactly, some comparison can be made. Summaries of the state policies in various circumstances are presented below, along with a description of public opinion on each matter.<sup>10</sup>

- Individuals who have left their jobs due to *new employment circumstances* are eligible for UI benefits in 15 states. Their status will vary according to individual circumstances in 25 states and they are ineligible in 13 states.

The ACUC survey indicated that almost half the respondents believe that a person should be eligible for benefits if their employer changes their work hours and the person is not able to work those hours.

- Individuals who have left their jobs *to perform other marital or domestic obligations (e.g. to deal with an illness in the family)* are eligible for UI benefits in 8 states. Their status varies according to individual circumstances in 13 states and they are ineligible in 32 states.

The ACUC survey indicated that almost three-quarters of the respondents believe that a person should be eligible for UI benefits if they leave their job because of a family crisis.

- Individuals who have left their jobs *to move with their spouse to another locality* are eligible for UI benefits in 9 states. Their status varies according to individual circumstances in 6 states and they are ineligible in 38 states.

The ACUC survey indicated that more than a third of the respondents believe that a person should be eligible for UI benefits if they leave their job because their spouse has been transferred to or accepted a new job in a different region of the country.

- Individual who have *refused a job with good cause* are eligible for benefits in 42 states. Their status varies according to individual circumstances in 7 states and they are not ineligible in any states.<sup>11</sup>

The ACUC survey indicates that more than a third of survey respondents believe that people who receive UI benefits should be required to accept any job they are offered.

### **Part-time Work Issues**

A number of the ACUC survey questions address eligibility issues related to part-time work. Almost three quarters of the respondents (71%) believed that people who worked part-time should, under some circumstances, be eligible for unemployment insurance benefits. Based on the chi-square test, responses broken down by gender, income, race, whether the survey

participant had a history of unemployment, and their views of UI benefits as earned insurance or welfare are significantly different from response rates that would have been predicted if these characteristics were independent of participants' views on part-time workers.

Survey participants who were women, had annual incomes of less than \$25,000, had been unemployed, or viewed UI as earned insurance were significantly more likely to believe that part-time workers should be eligible for UI benefits. Black and Hispanic respondents were also more likely to hold this view. Additional details are summarized in column 1 of Table 6.

Of the respondents who believed that people who worked part-time should, under some circumstances, be eligible for unemployment insurance benefits, almost three-quarters (72%) thought that people who worked half-time (20 hours per week) should not have to work for more than one year to be eligible for unemployment insurance benefits. As shown in column 2 of Table 6, income, unemployment history, race, marital status and view of UI benefits as earned insurance or welfare are significantly related to views on this issue.

- Eighty-one percent of Hispanic respondents, 72 percent each of white and black respondents, and 65 percent of Asian, Native American or other race respondents believed that individuals who work 20 hours per week should not have to work for more than a year to be eligible for UI benefits.
- A higher percentage of people who have been unemployed (77%) than people without a history of unemployment (69%) believed that individuals who work 20 hours per week should not have to work for more than a year to be eligible for UI benefits.
- Divorced, separated, or widowed respondents (75%) are more likely to believe that individuals who work 20 hours per week should not have to work for more than a year to be eligible for UI benefits than are married (73%) or single (69%) respondents.
- Respondents who view UI benefits as earned insurance (75%) are more likely to believe that individuals who work 20 hours per week should not have to work for more than a year to be eligible for UI benefits than are those who view UI benefits as part of the welfare system (64%).

TABLE 6. Part-time Work Issues

	Percent of respondents who said that part-time workers should be eligible for UI benefits under some circumstances. (n=1206)	Percent of respondents who said that individuals who work 20 hours per week should have to work for 1 year or less to be eligible for UI benefits (n=772)	What is the minimum number of hours per week that someone who had worked at a job for at least a year should have to work to be eligible for UI benefits (n=1206)		Percent of respondents who agree that people who are unemployed and searching for part-time and not for full-time work should be eligible to receive UI benefits (n=1206)
			Percent of responses 20 hours or less	Percent of responses 21-34 hours	
<b>Total</b>	<b>71.0</b>	<b>72.1</b>	<b>28.9</b>	<b>29.0</b>	<b>48.0</b>
<b>Age</b>					
18-34	75.3	72.3	29.5	32.5	57.2
35-54	72.0	70.2	30.9	29.5	48.1
55+	71.7	75.8	23.8	22.7	37.5
<b>Sex</b>					
Male	69.8	69.0	26.9	29.1	45.8
Female	75.7	74.7	30.8	28.9	42.1
<b>Education</b>					
HS or less	73.1	76.8	24.2	30.7	48.3
Some College	71.2	72.1	27.8	28.7	48.6
College	74.4	67.6	35.0	27.6	49.1
<b>Income</b>					
<25K	78.0	72.6	25.8	31.0	50.8
25<45	72.8	77.6	29.8	29.1	49.2
45<75	68.8	67.4	28.6	28.2	49.8
75+	69.8	69.0	38.8	24.0	41.5
<b>Union Member</b>					
Yes	76.1	72.3	29.9	30.1	43.1
No	71.8	71.7	28.6	29.0	48.9
<b>Ever Unemployed</b>					
Yes	76.7	75.7	29.6	30.8	53.7
No	69.8	68.7	28.4	27.5	44.7

TABLE 6. (continued)

	Percent of respondents who said that part-time workers should be eligible for UI benefits under some circumstances. (n=1206)	Percent of respondents who said that individuals who work 20 hours per week should have to work for 1 year or less to be eligible for UI benefits (n=772)	What is the minimum number of hours per week that someone who had worked at a job for at least a year should have to work to be eligible for UI benefits (n=1206)		Percent of respondents who agree that people who are unemployed and searching for part-time and not for full-time work should be eligible to receive UI benefits (n=1206)
			Percent of responses 20 hours or less	Percent of responses 21-34 hours	
<b>Knows People Who Have Collected UI</b>					
Yes	73.8	72.2	30.8	28.6	48.2
No	71.2	71.7	25.2	29.9	50.2
<b>Race</b>					
Hispanic	<b>83.3</b>	<b>80.6</b>	23.4	36.2	50.0
White	71.0	72.2	28.6	28.9	48.6
Black	<b>85.6</b>	71.7	30.3	29.3	50.8
Other	73.1	<b>64.7</b>	34.0	28.3	46.1
<b>Marital Status</b>					
Single	74.7	<b>69.0</b>	28.8	32.8	53.2
Married	72.5	72.7	29.5	27.8	48.2
Other	72.0	<b>75.3</b>	27.6	28.0	45.5
<b>View of UI</b>					
Earned	<b>75.5</b>	<b>74.6</b>	<b>30.2</b>	<b>29.5</b>	<b>50.7</b>
Welfare	<b>64.9</b>	<b>63.9</b>	<b>24.3</b>	<b>28.4</b>	<b>41.8</b>

NOTE: Responses that are statistically significant different across classification variables are indicated in bold.

<sup>1</sup> Asian, Native American, or other race.

<sup>2</sup> Divorced, separated, or widowed.

All survey participants were also asked what they thought the minimum number of hours per week people who have worked for at least a year should have to work in order to be eligible for unemployment insurance benefits. Fifty-nine percent of all participants' responses were less than 35 hours per week. Age, sex, and survey participants' views of UI benefits as earned

insurance or welfare were significantly related to responses to this question. Responses are summarized in columns 4 and 5 of Table 6.

When only participants who previously had indicated that part-time workers *should* be eligible for UI benefits under some circumstances were included in the analysis, the percentage of responses that were less than 35 hours a week rose to 72 percent. Additional analysis of this group, however, reveals some inconsistencies. When asked about someone who had worked at a job for at least a year, 38 percent of the respondents in this group thought that people should not have to work more than 20 hours per week to be eligible for unemployment insurance benefits. When asked, however, how long a person should have to work at a part-time job for 20 hours per week before they could be eligible for unemployment insurance benefits, 72 percent of the same group responded 1 or less years.

When asked about people who are searching for part-time work, forty-eight percent of respondents agreed or agreed strongly with the statement *people who are unemployed and searching for part-time work and not for full-time work should be eligible to receive unemployment insurance benefits*. While variation in the level of agreement or disagree with this statement varies significantly based on age, education, unemployment history, and view of UI benefits as earned insurance or welfare, the variation by age is most dramatic. More than 57 percent of respondents age 18-34 agree or agree strongly that people searching for part-time work should be eligible for UI benefits while only 38 percent of people 55 or older agree or strongly agree. Complete responses to this question are contained in final column of Table 5.

## CONCLUSION

This survey was conducted to assess public attitudes towards the UI system. This analysis focused on two fundamental areas—factors affecting the application for benefits and public views on eligibility—in an effort to define and examine trends in public opinions about the program. Though few clear trends emerged from the results, the survey provided some previously unknown information and allows for a few general conclusions.

The survey indicated that almost half of the participants had been involuntarily unemployed at some point in their life and that two-thirds had applied for UI benefits. Unemployed men and older workers were more likely to apply for benefits than were women and

younger workers. Men and older workers are also the groups that are traditionally most likely to be eligible for benefits given the earnings requirements currently in place in most states.

There is skepticism among respondents, however, about whether such earnings requirements should be used in determining eligibility. A plurality of survey respondents believe that eligibility for unemployment insurance should be based on how much a person has worked rather than how much they have earned. As would be expected, women (who have lower average earnings than men) are far less likely than men to believe that earnings should be used and the primary eligibility test. Furthermore, nearly as many respondents believed that eligibility should be based on economic need as believed that it should be based on earnings.

These views, to a great extent, coincide with recommendations made by the ACUC. The ACUC recognizes that the use of earnings as a measure of labor force attachment inherently penalizes low-wage workers—forcing them to work more hours to become eligible for benefits than workers who earn higher wages. As a result, the Advisory Council has recommended that any individual who works 800 hours per year (or about 16 hours per week for a full year) should be eligible for UI benefits and that state earnings requirements should not exceed 800 times the state minimum wage.<sup>12</sup> It has also recommended that the federal government take an active role in assuring that all workers with a given level of attachment to the work force are eligible for a minimum level of benefits.<sup>13</sup> Nearly three-quarters of the survey participants believe that part-time workers should be eligible for UI benefits under some circumstances. In addition, almost thirty percent of the survey participants agreed that someone who worked for a year should *not* have to work *more* than 20 hours per week in order to be eligible for benefits.

The survey also indicated that people have mixed views about nonmonetary eligibility issues. Previous work suggests that state laws do not always match public opinion. People who have been unemployed and who view UI benefits as earned insurance support more flexible eligibility requirements for each of the situations included in the survey. Generally, women, younger, lower income and less educated respondents also had more generous views.

## NOTES

1. The 10 questions follow. (1) When you were unemployed, did you ever apply for unemployment insurance benefits? (2) ...should eligibility for unemployment benefits be based on how much an individual has worked, or on how much they earn, or should eligibility for unemployment benefits be based on something else like age or economic need? (3) For a full-time job, how long a period of time do you PERSONALLY think a person SHOULD have to work before they would be eligible for unemployment insurance benefits? (4) Under some conditions should people who work part-time, that is, less than 35 hours a week, and not full-time, be eligible for unemployment? (5) How long do you personally think a person should have to work at a particular PART TIME job, for 20 hours per week before they would be eligible for unemployment insurance benefits? (6) Think now about someone who had worked at a job for at least a year. What is the minimum number of hours per week you PERSONALLY THINK they should have to work to be eligible for unemployment insurance benefits? (7) Please tell me if you agree strongly, agree somewhat, neither agree nor disagree, disagree somewhat, or disagree strongly, with the following statement: People who are unemployed and SEARCHING for PART-TIME work and NOT for full-time work should be eligible to receive unemployment insurance benefits. I am going to read you a series of statements about eligibility for unemployment insurance benefits. Please tell me, overall, how strongly you agree or disagree with each. Use a five-point scale, where 5 means agree strongly, 4 means agree somewhat, 3 means neither agree nor disagree, 2 means disagree somewhat, and 1 means disagree strongly. (8) A person should be eligible for unemployment insurance benefits if their employer changes their work hours and the person is not able to work those hours. (9) A person should be eligible for unemployment insurance benefits if they leave their job because of a family crisis, for example, a child becomes seriously ill. (10) A person should be eligible for unemployment insurance if they leave their job because their spouse has been transferred to or accepted a new job in a different region of the country. (11) Please tell me, OVERALL, if you agree strongly, agree somewhat, neither agree nor disagree, disagree somewhat or disagree strongly with the following statement: People who receive unemployment insurance benefits should be required to accept ANY job they are offered.

2. A Pearson chi-square statistic with a significance of .05 or less indicates, with a 95 percent confidence level, that the classification variable has a statistically significant relationship to the survey participant's response to the designated question. In some cases, the failure of chi-square tests to produce a significant relationship is due to the limited number of responses in a specific category. In addition, the chi-square test is not reliable if there are empty cells in the table or if there are cells with frequencies of less than five. Significant results are listed in boldface in all summary tables.

3. A previous effort to provide a comprehensive set of response categories had been unsuccessful and resulted in a large percentage of responses categorized as *other* or *don't know*. A supplemental set of questions regarding experience with the Unemployment Insurance System was added to the Current Population Survey (CPS), a monthly household labor force survey, in May, August and November 1989 and February 1990. Among other

questions, unemployed CPS participants were asked about their reasons for not receiving UI. Seven specific response categories were provided and about 20 percent of the responses were coded as *other* or *don't know* (Vroman 1991).

This problem was corrected in a 1993 supplement that more than doubled the number of response categories. The percentage of *other* and *don't know* responses dropped dramatically (U.S. Department of Commerce 1993).

While the CPS and the public opinion survey produced similar types of responses, results are not directly comparable because the CPS included only those people who were unemployed at the time of the survey. The public opinion survey asked this question of all people who reported any history of unemployment. However, the large variation in responses to this question is similar to experience in previous CPS supplements.

4. Additional responses to this question included: hadn't worked enough to qualify (6%); wanted to find a job or too busy looking for a job (5%); no need to apply (4%); ill, disabled or couldn't work (4%); quit job (4%); hassle, inconvenience (4%); benefits were not offered or not available (3%); never occurred to me/didn't think of it (3%); and no particular reason (4%). Numerous responses (27%) did not fit into any of these categories. They included: moved out of state, retired, decided not to work, had pension or other benefits, and didn't want to take public aide. Five percent didn't know and one percent refused to answer.

5. Specifically, in addition to the questions on demographic characteristics, survey participants were asked the following questions. (1) Which of these two statements do you think is the more accurate description of unemployment insurance? *It is part of our welfare system that provides for people who lose their jobs*; or *It is earned insurance that provides for people who lose their jobs*. (2) Other than yourself or members of your immediate family, do you know anyone who has ever received unemployment insurance benefits?

6. Specifically, survey participants were asked, *In your opinion, how important are unemployment benefits as a source of income to the families that receive them? Please use a five point scale, where "5" is very important, and "1" is not at all important.*

Dummy variables were used for education, race, and marital status. Omitted cases used were less than high school (for education), white (for race), and single (for marital status).

7. See Vroman 1991.

8. See Advisory Council on Unemployment Compensation 1995, p. 101.

9. The ICESA survey asks about *expected* decisions under a variety of circumstances because state statutes often do not include specific eligibility guidelines. Instead, interpretations of eligibility guidelines are frequently provided in state rules, regulations, or administrative or judicial case law.

10. See Advisory Council on Unemployment Compensation 1995, pp. 101, 114-117.

11. States, however, define good cause differently. For additional information on expected state UI agency treatment of particular cases see Advisory Council on Unemployment Compensation 1995, p. 117.
12. See ACUC 1995, pp. 17-18.
13. See Advisory Council on Unemployment Compensation 1996.

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## **CASE STUDY OF LOWER-AUTHORITY APPEALS HEARINGS IN EIGHT STATES**

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Anne Gallagher and Sarah Ralph are research assistants at the Advisory Council on Unemployment Compensation. The views expressed in this paper are those of the authors and do not necessarily reflect those of the members of the Advisory Council on Unemployment Compensation. This paper should not be quoted without permission of the authors.



## **Research Design**

In order to supplement existing data on unemployment insurance lower-authority appeals and to collect otherwise unreported qualitative data about the hearing process, the Advisory Council on Unemployment Compensation undertook a case study of appeals hearings conducted in eight states - California, Colorado, Illinois, Iowa, Maine, Maryland, Texas, and Virginia - over the summer of 1995.<sup>1</sup> An effort was made to select states that differed from one another with regard to a number of characteristics, including the volume of lower-authority appeals processed each year, the location of the state, whether the state was primarily rural or urban, and whether the state conducted the majority of its hearings by telephone or in person.

Researchers attended a total of 284 hearings between May and August 1995 (approximately 35 hearings were attended in each of the eight states).<sup>2</sup> Primary issues of research interest included the following: (1) the nature of the hearing process including its complexity, the role of the administrative law judge, and the relative ability of the claimant and employer to participate effectively; (2) the role of representation and its effect on appeal outcomes and the hearing process; and (3) issues of due process of law under the United States Constitution and the statutory "fair hearing" requirement.

## **Methodology**

Data on the 284 hearings were collected using a survey designed by researchers to capture both objective and subjective information about the appeals process. A mixture of separation cases and non-separation cases were observed. Separation hearings were those in which the issue being addressed was whether the claimant is disqualified from receiving benefits due to circumstances

surrounding the end of employment. Non-separation hearings were those in which the issue raised was whether the claimant met initial or continuing state eligibility requirements for UI benefits.<sup>3</sup> Of the 284 cases, 145 hearings were strictly non-separation hearings and 139 were separation hearings or hearings where both types of issues were in question.

In addition to collecting data on hearings as they were taking place, 10 percent of the cases used in the study were tape recorded hearings that had taken place roughly during the same time period. This was done to assess whether hearings with observers present were conducted differently than those where no observers were attending.

Quantitative information gathered on each appeal included the duration of the hearing, the number and role of hearing participants, the nature of the issue being addressed, the type and frequency of use of documents, witnesses, and other evidence, and of representation. Subsequent to the hearing, researchers also collected data on appeal outcomes. In addition, researchers systematically gathered qualitative data on how the administrative law judge (hereafter referred to as the referee) structured and participated in the hearing, on the effectiveness of evidence, witnesses, and representation, and on the ability of parties to present their case with and without representation. Questions were also included in the survey to evaluate due process concerns such as whether the parties received an opportunity to question and cross-examine witnesses, to present evidence, and argue their case, whether the parties received adequate notice of the hearing and the issues on appeal, and whether the hearing was "fair" and the decision maker impartial. Finally, the survey measured differences that occurred when hearings were conducted by phone as opposed to taking place in person.<sup>4</sup>

This case study is unique in that researchers had access to first-hand qualitative observations of some of the more subtle dynamics that take place in an appeals hearing. This included behavioral cues provided by participants (i.e., tone of voice, physical expressions) that offer an indication of the level of participant comprehension and satisfaction with the process that have thus far gone largely unexamined in the UI literature. In some states interviews were conducted with both claimants and employers after the hearing but before a decision was issued. This was done to establish how much prior knowledge of, and advanced preparation for the hearing had taken place, and to assess each party's satisfaction with the process up to that point.<sup>5</sup> Researchers were also able to obtain information from referees about the factors that lead the referee to reach a particular decision. Findings concerning appeal outcomes are strengthened by the fact that researchers had access to written decisions in all eight states.

## **Summary of Findings**

This research was exploratory in nature. Therefore, much of the information collected was qualitative and not easily generalizable. However, a number of trends that affect the process and outcome of lower authority appeals were identified. Some issues that came to the attention of researchers were state-specific. Other issues were common across all of the eight states.

One trend that emerged across all states was that a substantial number of hearings take place with either the claimant or the employer failing to participate in the hearing. On average claimants participated 87 percent of the time, and employers participated 65 percent of the time. These figures are high considering that this research excluded appeals where neither party appeared. Participation rates varied both by state and by the nature of the issue being addressed.

In separation cases, even when both parties did attend the hearing, parties often failed to bring witnesses who had first hand knowledge of the culminating event that lead to the work separation.

A second trend which emerged in all states was that representation was the exception rather than the rule.<sup>6</sup> Employers were more apt to send representation to participate on their behalf than were claimants. As will be delineated in the body of this paper, claimants, when they did bring representation, were more likely to bring legal representation. Employers, when represented, were more likely to rely on the services of an outside payroll company to represent their interests.

Data from this study reveal that having representation did not significantly enhance the likelihood that an employer would win the case. Representation for claimants occurred too infrequently to be able to generate statistically significant findings.<sup>7</sup> The presence of representation did tend to affect the hearing process, however. Hearings where representation was present tended to be longer and to involve more witnesses and documentation.

Substantive variations in the hearing process were observed both in and between states. Some of the observed differences were the result of variations in state UI law. Other differences were the product of the volume of cases that particular states and individual referees were responsible for handling, and the degree of discretion that each referee is afforded. A discussion of some of the variations in state procedure is included below. Finally, the nature and legal requirements of the appeals process offers advantages and disadvantages to participants. Aspects of the appeals process that appear to be performing well, and components that seem to be functioning less smoothly are identified and discussed in the final section.

## **Description of Observed Appeals**

The average length of an appeals hearing across the eight states was thirty-one minutes. Separation hearings tended to be longer than nonseparation hearings due to the nature of the issue being contested, and because both parties were more likely to attend and bring documentation and/or witnesses. Separation hearings had an average duration of 33 minutes, but had a range of between 2 and 146 minutes.

Non-separation hearings were shorter in length, and largely involved only the claimant and the appeals referee. Under these circumstances the hearings lasted on average 20 minutes.

The majority of hearings that were observed (87%) involved private companies. This figure includes both large corporations and small businesses with only a few employees. The remaining 13 percent were public employers including schools, utility companies, and state municipalities.

Of the observed hearings, 70 percent were appeals filed by the claimant. This percentage is similar to that of claimant appeals in the overall UI system. More than three-fourths of the hearings (77%) involved a separation issue.<sup>8</sup> Just over half of the hearings (52%) were conducted in person, and the remaining 48 percent were conducted with at least one person participating by telephone.

Employers appealed less frequently than claimants (30 percent of the time); overall, however, 41 percent of the decisions were decided in the employer's favor and 42 percent were decided in the claimant's favor.<sup>9</sup> Employers and claimants each won roughly 42 percent of the time when they appealed.<sup>10</sup> For additional outcomes see Table 1.1. A number of factors affected

the hearing process, including participation by the parties and the presence of representation. These factors are explored in additional detail below.

## **Participation by the Parties**

Lack of participation was noteworthy in observed hearings.<sup>11</sup> In most states appeals are automatically dismissed if either the appealing party or neither side appears for the hearing.<sup>12</sup> Even having excluded such cases, however, at least one side failed to appear in 37 percent of the separation hearings. The participation rate for such hearings varied by state. For claimants, participation ranged from between 74 to 100 percent of the time. Employers participated in separation hearings between 41 and 96 percent of the time.

A number of factors may lead to a party's failing to attend the hearing. If a claimant has accepted a new job in the period after filing the appeal but prior to the scheduled hearing, he or she may decide not to pursue the appeal despite the fact that the case may have merit. An additional portion of claimants may not attend out of a reluctance to confront a former employer in the context of a hearing.

In several states, if the employer does not participate in the initial fact finding, then it loses the right to file an appeal later. Busy employers may not feel that they have the time to attend the hearings. Anecdotal information reveals that many companies automatically appeal every time an employee is awarded benefits, but then attend only if they feel they have an exceptionally strong case. It was not possible to measure what percentage of non-participation on the employer's part was due to mis-communication or mishandling of hearing notice information.

Potentially, a portion of both claimants who did not participate in the hearing did not receive or fully understand the hearing notice. Unforeseen logistical problems, and/or an inability to locate the appeals office may pose problems for some. Both parties may not realize the consequences of not attending the hearing. Either side may request that the case be re-opened if it can be established that the party had "good cause" for not having appeared at the scheduled hearing.

As would be expected, participation in the hearing significantly affected the outcome of appeals for both claimants and employers (see table 1.2). Of the separation hearings observed, claimants who participated achieved favorable outcomes 52 percent of the time, while those who did not participate won only 26 percent of the time. Similarly, employers who participated in hearings won 54 percent of the time, but those who did not participate won only 39 percent of the time.<sup>13</sup>

## **Preparing For the Hearing**

The actual appeals hearing occurs after participants have completed a number of preliminary steps in the application and appeals process. After an initial determination of benefit eligibility is issued by the local UI representative, parties are given 15 - 30 days to file an appeal. Twenty-two percent of observed appeals were first reconsidered by a representative at the local office before a formal hearing was scheduled. In general, a reconsideration of the initial determination was done only if new evidence or pertinent facts emerged that would alter a decision before the initial determination took effect.<sup>14</sup>

Hearings are scheduled to take place at both central state UI headquarters and at local offices scattered throughout states.<sup>15</sup> Some states require that referees regularly rotate where they conduct hearings to avoid having repeated dealings with the same firms or with the same party representatives. Theoretically, this could help maintain impartiality. Other states prefer that referees have set jurisdictions. This reduces travel expenses and may allow referees to become more familiar with labor issues in their geographical districts.

Once an appeal has been scheduled for a hearing, all participants are sent a "Notice of Hearing". While the format varied somewhat between states, in general hearing notices contained at least the following information:

- A statement of the legal authority and jurisdiction under which the proceeding was being conducted;
- A reference to the particular substantive statutory rule under which the proceeding was being conducted;
- A short statement of the nature and purpose of the proceeding and of the matters asserted;
- A statement of the time and place of the hearing;
- A statement of the manner and time within which evidence and argument may be submitted to the Division of Administrative Hearings for consideration.<sup>16</sup>

In general, states also provided information to hearing participants about the format of the hearing (i.e., a telephone hearing or an in-person hearing), the option of bringing representation, and the right to subpoena witnesses and/or evidence if necessary. The length of the notice, level of formality, and sophistication of language used in the hearing notices varied by state.

In addition to the formal notice, all eight states included in this case study distributed or made available literature to assist participants in preparing for the hearing. The degree of formality and ease of comprehension of material provided to parties varied across states. Some of the literature was simply a statement of rights and responsibilities that are incumbent upon participants.<sup>17</sup> Other, more helpful, brochures included pictures of the hearing room, a description of what to expect at the hearing, and tips on how to effectively prepare one's case.<sup>18</sup>

### **The Role of the Administrative Law Judge**

Lower-level unemployment appeals hearings are presided over by an administrative law judge known alternatively as an administrative hearing officer, or a referee. This referee may or may not be admitted to the bar depending on state requirements.<sup>19</sup> As is described by Kritzer (1995), the referee in this type of administrative proceeding is not merely a passive weigher of facts. He or she is required to take an active role in conducting the hearing, in eliciting information, and in assisting participants in structuring their case if necessary.

The variation in referee involvement that researchers observed was more a product of the style and perceived role of the individual acting as referee, than as a result of state-imposed requirements. Some referees took stern authoritative stances during hearings, tightly controlling all aspects of the hearing, and only allowing testimony and evidence to be entered that was unequivocally related to the issue at hand.

Other referees adopted a more informal, permissive approach, intervening minimally after explaining what would take place. These referees allowed parties to present any information they believed would help their case (even if some of it was superfluous). After the hearing they

set aside irrelevant testimony and evidence, relying only on pertinent information presented at the hearing to reach a decision<sup>20</sup>

All sampled states made efforts to minimize the influence of the individual style of referees by standardizing proceedings where possible. This included providing uniform introductory statements for referees to make at the beginning of each hearing. Although the content of these introductory statements varied across states, they generally gave an overview of the hearing process, including such things as the order of testimony, the right to question and cross-examine witnesses, the right to present testimony, documents, and other evidence, what participants could and could not do during the hearing, how a decision would be reached, and options if a participant wished to appeal the lower-authority decision.<sup>21</sup>

## **The Hearing**

In 78 percent of observed separations hearings that both parties attended, the claimant came to the hearing alone, without the aide of either representation or witnesses to substantiate his or her case. A single spokesperson attended the hearing on behalf of the employer 45 percent of the time.<sup>22</sup>

For both claimants and employers, crucial elements in presenting an effective case included submitting documentation on time and having relevant witnesses and evidence available at the hearing. The frequency and nature of evidence and witnesses used differed for claimants and employers in this study.

Claimants brought documentation that was submitted as evidence to 24 percent of separation hearings which both parties attended.<sup>23</sup> The type of documentation claimants brought

included medical records and letters from medical professionals verifying illnesses and work restrictions. In addition, claimants also brought written statements from co-workers describing working conditions, copies of favorable work evaluations, and records of hours worked for the employer.<sup>24</sup>

Employers brought documentation more frequently: 40 percent of the time. Theoretically it is easier for the employer to arrive with workplace documentation because they have greater access to personnel files and employer policy manuals. The type of evidence that employers brought to the hearings included signed employee acknowledgments of employer policies, performance evaluations, written warnings given to claimants for performance concerns, and attendance records.

In 15 percent of separation hearings, claimants brought witnesses to support their claim. These witnesses tended to be relatives, co-workers, friends, and family counselors. Occasionally, people who accompanied claimants acted merely as observers to provide moral support. More frequently, claimant witnesses were present to provide evidence of working conditions, character references, or verification that the claimant's version of separation events. Witnesses for claimants tended to be most helpful when they had directly observed the event that led to the claimant's discharge, or when they could provide first-hand testimony that the employer routinely allowed other workers to follow a practice for which the claimant had been terminated. Character witnesses, and testimony on how indigent the claimant was did not have much (if any) bearing on outcomes.<sup>25</sup>

Even with the option to subpoena witnesses, it may be difficult for claimants to arrange for co-workers (who are still working for the employer) to participate on the claimant's behalf.

Claimants spoke of being reluctant to ask co-workers to testify for fear of putting the co-worker's position in the company in jeopardy and of co-workers who had refused the claimant's request that they testify against their employers for the same reason. Furthermore, because perjury is rarely pursued by authorities, the claimant has no guarantee that a subpoenaed witness will tell the truth.<sup>26</sup>

Employers brought witnesses more frequently, 53 percent of the time.<sup>27</sup> Witnesses for the employer included administrators, co-workers supervisors, human resource representatives, and upper-level company executives. As was the case with witnesses for claimants, employer witnesses were most helpful when they had first-hand knowledge of the events leading to the work separation. The quality of the testimony offered by witnesses uniformly was more important than the number of witnesses who participated on the firm's behalf. There was no evidence that companies who sent multiple executives and human resource representatives to testify about official company policies fared any better than firms who sent the claimant's direct supervisor who was most familiar with the issue being addressed.<sup>28</sup>

## **Representation**

In accordance with the fair hearing provisions spelled out in the United States Supreme Court case *Goldberg v. Kelly*<sup>29</sup> all states allow for representation by counsel for hearing participants. None of the sampled states currently provide representation to participants as a matter of protocol, free of charge. All sampled states made an effort through their literature to inform claimants that they were permitted to have a lawyer or representative of their choice present at the hearing at the participant's own expense.<sup>30</sup>

Representation took various forms, including both legal and non-legal representation<sup>31</sup> and representation by non-attorneys. This included so-called "third party" representation, usually in the form of a payroll service or a claims management firm representing the employer. *Legal* representation was quite infrequent, occurring in only 4 percent of cases for either claimant or employer. None of the states included in this study required that representatives be admitted to the bar.

Overall, claimants were represented in 6 percent of hearings, although 92 percent of their representation was legal in nature. Claimants tended to be represented when there was also a worker's compensation case pending, when there were criminal allegations or questions of fraud involved, or when the claimant had a family member or friend who was an attorney take on the case. In addition, a claimant was also more likely to secure representation if he or she had already received a substantial portion of unemployment compensation benefits. Under these circumstances the claimant had a significant financial interest in winning the appeal to avoid paying back money already received.

Unlike claimants, employers were represented in 28 percent of hearings they attended, usually by a payroll or claims management firm (83 percent of the cases in which they were represented). When representation was observed in this study, it was most frequently employer representation in the form of payroll services or UI claims management firms. In an additional four percent of cases, employers sent only a hired representative to the hearing to participate on the company's behalf, without a company employee being present at all.<sup>32</sup> Involvement by these firms ranged from filing the appeal on the employer's behalf, to passively attending the hearing without participating, to actively questioning and cross examining witnesses.

Anecdotal information reveals that there are different packages of services that an employer may purchase from a claims management firm, each providing a different level of involvement in the hearing process.<sup>33</sup> Quality of employer representation varied more by individual representative than by firm providing the representation or by state. The most effective employer representatives were those who appeared to have the most thorough knowledge of state UI law, and who were very succinct in presenting the employer's case. Researchers observed representation by large national firms, and by individuals who had started their own business representing employers at unemployment insurance hearings. Referees reported having previously encountered a particular employer representative in eleven percent of the hearings.<sup>34</sup>

### **The Effect of Representation on Appeals Hearing Outcomes**

The lack of a statistically significant impact of representation on outcomes for employers is noteworthy.<sup>35</sup> Whether considering overall employer representation or representation by a third-party firm, employers were *not* statistically more likely to win cases in which they were represented.<sup>36</sup> Controlling for who participated in the hearing and for whether a separation or nonseparation issue was at stake, employers were as likely to win a case when they were represented by a payroll firm or claims management firm (they won 50 percent of the time) as when they were unrepresented (they won 51 percent of the time in this situation). Overall, the results suggest that the predominant form of representation observed had no significant effect on appeal outcomes.

Because the frequency of claimant representation was so low (14 out of 284 cases), no statistically significant effect of representation on outcomes is observable.<sup>37</sup> Similarly, because

the absolute level of legal representation in the hearings observed was so low for both claimants and employers<sup>38</sup>, no generalizable findings with respect to the effect of legal representation on outcomes based on this study are possible.<sup>39</sup>

While the small sample size used in this study may be one reason why representation was not shown to significantly enhance the party's chances of winning, there may be other factors involved. Qualitative observations suggested that mistakes by employer representatives, particularly administrative mistakes, seemed frequently to diminish the positive effect of representation at the hearing. For example, researchers observed several cases in which the employer representatives failed to file the appeal by the appropriate deadline, leading to the automatic dismissal of the appeal. Employer representatives also failed to inform employers of appropriate times and dates of hearings in a few instances. Furthermore, employer representatives often failed to bring the employer witness with the most direct knowledge of an alleged incident to the hearing, substituting instead an administrator or personnel spokesperson.<sup>40</sup> Any information provided by a second-hand witness would be considered hearsay and be given less weight than direct testimony from the claimant. These factors worked to decrease the employer's chances of winning an appeal.

### **The Effects of Representation on the Hearing Process**

Although representation appeared to have no effect on outcomes in the cases observed, it did appear to affect the hearing process. When claimants were represented, they were far more likely to bring documents and witnesses to the hearing than when they were unrepresented. For example, unrepresented claimants brought witnesses to only 9 percent of hearings; represented

claimants brought claimants to 57 percent of hearings. Claimants who were represented were also more likely to register objections than were unrepresented claimants.<sup>41</sup>

Employers were more likely to bring witnesses and to register objections when represented than when unrepresented. For example, unrepresented employers registered objections in only 3 percent of cases, whereas represented employers registered objections in 17 percent of cases.<sup>42</sup> Employers were not statistically more likely, however, to bring documents when they were represented. This result was expected, as employers routinely arrived at hearings with paper work such as personnel and other records.

Hearings were longer when parties were represented than when they were unrepresented. The average hearing length when neither claimant nor employer were represented was 29 minutes. The average hearing length when at least one side had representation increased to 39 minutes, a statistically significant difference. These results suggest that, in the hearings observed, represented parties asserted more rights than nonrepresented parties did, although the represented did not achieve more favorable results (see table 1.3).

## **Telephone Hearings**

The ACUC study also examined the impact of conducting hearings by telephone, compared to the impact of holding hearings with all participants attending in person. Each of the eight states in the case study conducted a portion of its hearings by telephone. The percentages of observed hearings in which at least one party participated by telephone varied among states, ranging from a high of 75 percent to a low of 12 percent.<sup>43</sup> Overall, 48 percent of observed hearings were conducted, at least partially, by telephone.<sup>44</sup>

The criteria for conducting appeals hearings in person or by telephone varied by jurisdiction. Interstate hearings, or other situations in which the employer and claimant are separated by a substantial geographic distance (generally 30 miles) were usually held by telephone in all surveyed states.

Two of the eight states sampled conducted telephone hearings by default. That is, the hearing is conducted by telephone unless at least one party requested an in-person hearing.<sup>45</sup> The other six states conducted hearings in person unless a formal request for a telephone hearing is made in advance.<sup>46</sup> Policies vary by state regarding whether parties are informed in advance as to how the other party will be participating.

The nature and complexity of the case also played a role in determining how a hearing is conducted. Those that involve extensive documentation, fraud cases, and hearings in which attorneys or a number of witnesses are scheduled to participate, generally take place in person. Interstate, single party nonseparation hearings, and those for which the claimant was allegedly separated from employment for a violent offense are often held by telephone. All surveyed states intend to maintain if not expand the use of telephones for appeals hearings.

### **Advantages and Disadvantages of Telephone Hearings**

There are advantages and disadvantages to conducting hearings by telephone. It is easier to maintain the safety of all parties when direct physical confrontation is avoided. It is often logistically easier to participate if a party has the option to do so by telephone. In addition, outcomes may be less likely to be biased by how well a participant presents himself or herself

physically. At the same time, however, the use of telephone hearings may cause difficulties or even inequities, as discussed here.

When a hearing is scheduled to take place by telephone, a substantial amount of advance preparation must be undertaken to assure that all parties have received copies of any documentation that will be referred to during the hearing. This may pose difficulties for parties going through the process for the first time.

Non-verbal cues, often an integral part of an in-person hearing, are not available to the referee to assess credibility.<sup>47</sup> It is easier for the referee to gage whether participants are following the proceedings when they are present in the room. It is virtually impossible for a referee to verify whether or not a witness who is participating by telephone has been sequestered. Parties that are not comfortable using the telephone may be at a disadvantage. Finally, the hearing may be perceived as being less formal and may not be taken as seriously if participants are not compelled to show up and confront the other participant face to face.

### **The Effect on the Hearing Process of Conducting Hearings by Telephone**

Employers tended to participate in hearings by telephone more often than claimants did.<sup>48</sup> It was found that the longest average hearings (50 minutes) occurred when both parties participated in person. Hearings in which the claimant participated in person and the employer participated by telephone had the shortest average duration (28 minutes).

There is evidence that who participated in person were more likely to have brought documentation, and there is also some evidence that parties who participated by telephone may have been less likely to raise questions about the hearing process. Claimants were twice as likely

(33 percent of the time) to bring documentation to be used as evidence when both parties participated in person then they were when both parties participated by telephone. Similarly, employers were more likely to bring documentation when participating in person than by telephone. In separation cases (in which it is more likely that both sides will participate) it was found that claimants who participated by telephone tended to raise fewer questions about the process than did claimants who participated in person.

The results of a subjective evaluation of how prepared each party was for an observed hearing are also consistent with these findings. On a five-point scale, which took into consideration factors such as the use of supporting documentation, and the use of relevant witnesses, both claimants and employers received their highest scores when they both participated in person.

One additional consideration was evident in observing telephone hearings. Nearly 20 percent of hearings that involved the telephone were characterized as having various technical difficulties. This was defined as either a poor-quality connection or as situations where the referee had trouble establishing or maintaining contact between all parties. Procedures varied by state as to how long a referee will wait for an in-coming call from a participant before starting proceedings.<sup>49</sup> They also varied as to how many times the referee would attempt to reach a party if the initial attempt was unsuccessful.

Overall, therefore, as with the presence of representation, the use of telephone participation did have some clear impact on the nature of the individual hearing process itself, although there is no evidence that it affected the actual outcomes of the observed lower-authority appeals hearings.

## **State Variations in Lower-Authority Appeals Hearings**

Observed variations in the way that hearings were conducted were due in part to variations in state UI laws. In one state, this included who the chargeable employer was. If all employers during the specified base period were potentially chargeable (rather than just the most recent employer), then it was more likely that multiple employers would have been party to a case and would participate in the hearing or that multiple UI hearings would be held for a single claim (one for each employer).

Other variations in state law include how the terms "misconduct" and "quit for good cause" were defined and applied. Some of the surveyed states require intentional disregard of the employer's interest on the part of the claimant in order to find misconduct while others do not.<sup>50</sup> In addition, some but not all states required a quit to be directly related to work conditions to be non-disqualifying.<sup>51</sup> The periods of disqualification for misconduct or for quitting a job also varied among states.

States' definitions of what constitutes an "active work search" and being "able and available" also varied. Thus, claimants in different states with identical claims could experience very different outcomes to their appeal simply due to variations in state UI law.

In addition to differences in hearings attributable to varying substantive state laws, some variation in state process was due to practices that states have developed over time. Considerable variation existed among states and hearing officers with regard to what is considered "good cause" for re-opening a hearing. (i.e., a claimant's inability to locate a baby sitter on the day of the hearing might be considered good cause to re-open the case in some states, but not in others).

States also differed in the way they serve subpoenas. In one state, subpoenas were simply mailed out. Another state hired a company to act as process servers. In all observed states, however, there appeared to be some reluctance to grant subpoenas. This is further discussed below, as discussed below.

One of the most noteworthy variations in state procedure, is the amount of time that is allocated to a hearing. One sampled state allocates a half hour to each hearing, regardless of the issue being addressed or the number of witnesses and documentation involved.<sup>52</sup> Some states allocated from forty-five minutes up to an hour and a half for separation or more complicated cases. Most common was to schedule separation hearings for a longer time period than nonseparation hearings. There is evidence that *some* states with a high volume of cases were less likely to grant postponements or continuances for fear of creating a greater backlog of cases and jeopardizing the ability to meet federally mandated timeliness deadlines.

Other variations in state procedure included how vigorously overpayments were pursued by state UI offices. In one state, an overpayment would end up being collected only if at some point the claimant opened a new claim. Under these circumstances the claimant is ineligible for benefits until the outstanding overpayment is paid back. Other states pursued overpayments more aggressively by doing such things as withholding tax refunds.<sup>53</sup>

Another noticeable variation was how states handled multiple issues involved in a single claim (i.e., cases in which both a separation and a nonseparation issue needed to be addressed). Most states handled both issues at the same hearing. One state scheduled separate hearings five minutes apart for each issue, and then with the consent of parties, heard both issues at the same

hearing. Still others scheduled separate issues relating to the same claim on completely different days.

## **Due Process Issues**

Qualitative information gathered during the observed hearings revealed several essentially informational problems related to due process and the ability of claimants and/or employers to obtain a fair hearing.

### **Cross Examination**

The process of cross-examination, whereby a party has the opportunity to question a witness about testimony that he or she has already given, posed problems for both claimants and employers.<sup>54</sup> By convention, the opportunity to ask the opposing witness questions about his or her testimony comes before the opportunity for rebuttal. Researchers observed that it was difficult for both claimants and employers alike to refrain from responding to testimony during cross-examination. Frequently referees reprimanded participants for violating this policy. Claimants and employers also found it awkward to phrase *questions* designed to elicit the information they were interested in.

The difficulty parties had with cross-examination was not merely one of form. Many claimants and some employers forgot the points they were going to make on rebuttal because of the intervening period of cross-examination. This raises the question whether, regardless of who has the burden of proof, it would be more advantageous to the parties to have the option of cross-examining at the conclusion of all testimony.

## **Objections**

Researchers observed that claimants and some employers also did not understand what referees meant by "entering documents into the record." Claimants frequently were concerned that making a document part of the record implied that the referee had accepted the content of the document as being factually correct. Rarely did referees explain the significance of entering documents into the record or the possible grounds for objecting to a document being entered into the record.<sup>55</sup> Although many legal objections may be fruitless in the context of UI hearings, where strict evidentiary rules are not followed, this research revealed that claimants and employers are unformed of the possibilities for making legal objections to submission of evidence.

## **Notice**

A potential problem with hearing notices concerned notification of issues on appeal. Some states specified with greater clarity than others what legal and factual issues were properly before the referee on appeal. Other states, however, tended to list blanket legal issues such as listing all categories of misconduct or listing both misconduct and voluntary quit as issues to be addressed in the hearing. Still other states treated certain subjects, such as ableness and availability for work, as issues which the referee could raise at any time during the hearing. Most states list both misconduct associated with the work and voluntary quit for good cause as issues to be explored and decided upon at the hearing.<sup>56</sup> While this may not technically be considered issue switching (i.e., where the claimant shows up prepared to discuss one issue only to have a completely different issue than expected on the agenda), this practice may make it more

difficult for participants to effectively prepare their cases if the specific issues to be addressed are not clearly delineated and restricted in advance.

Claimants also seemed to have difficulty understanding the legal issues at stake. For example, claimants had difficulty in comprehending the idea that the claimant is only eligible to receive benefits if he or she voluntarily left employment for a cause that is directly attributable to the employer. Often claimants came to the hearing prepared to defend the proposition that they had good reason to leave a position (i.e., too long a commute, the need to accompany a spouse who was relocated for employment purposes, or that a claimant could no longer find child care). Many referees did not see it as their role to define what "good cause *attributable to the employer*" meant, but assumed that the decision letter would provide sufficient explanation.

#### **De Novo Hearing**

Employers and claimants were also frequently confused by the concept of the "de novo" hearing.<sup>57</sup> The fact that in over a third of the cases one party or the other did not show up may be an indication that the parties felt that if they since have had already presented their version of the case to the local office, they had nothing to add to previously supplied information. Participants may not realize that they must "re-present" their case to the appeals referee for a new determination.

#### **Availability of Subpoenas, Continuances, and Postponements**

Theoretically, claimants and employers have the right to subpoena witnesses to attend UI hearings, and to obtain continuances or postponements of hearings if there is good cause for doing so.<sup>58</sup> Observations in the studied states suggested that in general, employers generally do not

need subpoenas because the witnesses they wish to bring are often still employed by the company. Under these circumstances employer witnesses are more likely to be influenced by the wishes of the employer. On the other hand, in post-hearing interviews, claimants noted on several occasions that they had wanted to bring a witness who still worked for the company, but that the individual was too fearful of losing his or her job to testify on the claimant's behalf. Therefore, the availability of subpoenas may be most relevant to claimants.

As mentioned above, some states may be more reluctant to grant subpoenas, continuances, and postponements. The reluctance with respect to subpoenas may stem in part from an institutional lack of power to enforce subpoenas without going to court. It may also stem from a desire to avoid being perceived as needlessly disruptive of business, by drawing employer witnesses away from work.

Reluctance by state agencies to grant continuances and postponements may stem instead from the pressure to meet federal timeliness guidelines on the issuance of decisions. Some states may opt to issue fewer continuances and postponements in order to fulfill these federally mandated timeliness requirements. This study relied on information in the appeals file to determine whether a subpoena, continuance, or postponement had been requested.<sup>59</sup>

### **Interpreted Hearings**

Due to the fact that researchers observed only a small number of hearings that had involvement by interpreters, statistically significant quantitative findings are limited. In most states, if the claimant requests the services of an interpreter, then it was provided free of charge by the state (requests must be made in advance). Other states left it up to claimants to bring an

interpreter if they feel that it is necessary.<sup>60</sup> Some states required that all interpreters in appeals hearings be court-certified. Other states, however, periodically used court certified interpreters, but also used professional or non-professional interpreters. In observed hearings, non court-certified interpreters tended to be less consistent about providing a verbatim translation of testimony. In some cases this may have had the potential to impede the ability of the parties to understand proceedings and to be fully heard.

In addition to identifying some of the concerns cited above, researchers consistently observed parts of the process that were performing well. In particular, in all states, referees consistently made an effort to provide some explanation of the hearing process. Furthermore, in all observed hearings referees clearly attempted to afford participants due process by providing at least a brief summary of participant rights and options for further appeal. This was the case both in the live hearings observed, and the tape recorded hearings that researchers randomly selected to include in this study.

**Table 1.1 Summary of Outcomes by Various Circumstances**

	Number of Cases Observed			Percent of Cases Won By:	
				Claimant	Employer
Overall <sup>a</sup>	236	42	41		
Appeal Initiated By:					
Claimant	183	42	58		
Employer	72	58	42		
Issue Appealed					
Separation	198	49	51		
Nonseparation <sup>b</sup>	58	40	28		
Appeal Conducted <sup>c</sup>					
In Person	42	52	48		
Phone	99	52	48		
Participation					
Both Parties Present	142	52	48		
Claimant Present <sup>d</sup>	173	52	48		
Claimant Not Present <sup>d</sup>	23	26	74		
Employer Present <sup>d</sup>	155	36	54		
Employer Not Present <sup>d</sup>	41	61	39		
Representation of Claimants <sup>c</sup>					
Overall	12	33	67		
Attorney	10	30	70		
Representation of Employers					
Overall	31	55	45		
Attorney	9	55	45		

NOTES: <sup>a</sup>In 17 percent of the cases, decisions were either unavailable or in favor of the state.  
<sup>b</sup>The remaining 32 percent of the nonseparation cases were in favor of the state in that the initial determination (disqualifying the claimant or holding the claimant ineligible) was upheld.  
<sup>c</sup>Includes only those separation hearings in which both parties participated.  
<sup>d</sup>Participation in separation hearings only.

SOURCE: ACUC tabulations of observed lower authority appeal hearings.

**Table 1.2 Frequency and Effect of Participation, Separation Appeal Hearings**

	<b>Participated (Percent)</b>	<b>Did Not Participate (Percent)</b>
<b>Claimant</b>		
Overall	86	14
Favorable Outcome	52	26
<b>Employer</b>		
Overall	77	23
Favorable Outcome	54	39

**NOTE:** The number of cases in which claimants did not participate and employers did not participate are additive because there is no overlap between these cases. Thus, in 37 percent of the hearings, only one party participated.

**SOURCE:** ACUC tabulations of observed lower authority appeal hearings.

**Table 1.3 Frequency and Effect of Representation**

	Represented (Percent)	Not Represented (Percent)
Claimant	6	94
Overall		
Favorable Outcome When:		
Documents Used	50	20
Witnesses Used	57	9
Objections Raised	64	7
Employer		
Overall	28	72
Represented by UI Firm	23	----
Other	4	----
Favorable Outcome When:		
Documents Used	N.A.	N.A.
Witnesses Used	94	37
Objections Raised	3	17

**NOTE:** Only statistically significant results are reported for favorable outcome. N.A. indicates that the result was not statistically significant.

**SOURCE:** ACUC tabulations of observed lower authority hearings.

1. The Advisory Council expresses its thanks to all of the individuals who work in the appeals offices of the eight states that participated in the case study. In particular, this project would not have been possible without the assistance of the following individuals: Mike DiSanto, Ron Kammann, and Tim McArdle in California; Betty Graham, Lyle Seebaum, and Dennis Zerlan in Colorado; Victor Napolitano in Illinois; Dan Anderson and Steve Beasley in Iowa; Allan Toubman in Maine; Marvin Pazornick, Henry Rutledge, and Louis Steinwedel in Maryland; Gordon Doig and Lee Hartman in Texas; and David Breme and David Latham in Virginia.
2. Because of the relatively small number of hearings observed in each state, the capacity to find statistically significant differences was generally limited. Unless otherwise noted, this paper only reports results that are statistically significant at the 95 percent confidence level.
3. See Advisory Council on Unemployment Compensation. 1995. "Trends in Appeals in the UI System". Advisory Council on Unemployment Compensation, Washington, DC. April.
4. Several questions were included in the survey to assess the equity of hearings that took place when a party relied on an interpreter to participate on his or her behalf. However, there were an insufficient number of hearings where interpreters were involved to be able to arrive at any definitive findings.
5. As researchers were unable to conduct interviews on a systematic basis in each state, information gathered from these interviews is provided here simply to flesh out qualitative findings that were systematically observed.
6. Employers were considered to be "represented" when either an outside agent or in-house legal counsel attended the hearing for purposes of presenting the employer's case and conducting questioning and cross-examination. Human resource professionals who may have acted in part as representatives were *not* treated as "representation."
7. This research was geared towards measuring the actual frequency and effectiveness of representation that is taking place in the eight states surveyed. Therefore, no claims about the potential impact of representation under ideal circumstances are being made.
8. See Chapter 8 of Advisory Council on Unemployment Compensation (1995) for additional information on nonmonetary eligibility, including separation issues.
9. Of the remaining 17 percent of the cases, the decision was either unavailable, or it was more favorable to the state UI agency than to the claimant or employer. These decisions were most often issued in cases where the state found the claimant ineligible or disqualified after a non-separation hearing to which the employer was not a party.
10. Nationally this figure is at about 32 percent each for both claimant and employer. See Advisory Council on Unemployment Compensation, "Understanding Denials and Appeals in The United States". June, 1995.

11. Analysis of participation in appeals hearings was limited to those hearings involving a separation issue, in order to avoid underestimating employer participation. Employers generally have less incentive to attend non-separation hearings, both because the state often appears as a party and because a relatively short period of disqualification or ineligibility is often at stake. Further, the state does not always consider the employer a party to a non-separation hearing and may therefore not notify the employer about the hearing.
12. In one state, if neither party appears for the hearing, then the referee reviews the hearing file and issues a decision based on the existing record compiled by the initial fact finder. On no occasions in this study did the referee reverse the initial fact finder's decision under these circumstances.
13. This result was significant at the 90 percent level.
14. Two states, however, perform reconsiderations on all initial determinations that are appealed. However, these reconsiderations rarely if ever yield different outcomes.
15. In an effort to reduce administrative overhead, one state periodically rents space in local hotels for hearings. This reduces the need for office space in areas of the state where the number of hearings that need processing is low.
16. These requirements were taken from state specific regulations for the state of Maine, although researchers observed similar information on hearing notices in all states. See Commerce Clearing House Inc., Unemployment Insurance Reports, 1993.
17. Issues addressed included the concept of a "de novo" hearing (documents and testimony should be presented at the hearing as if for the first time as the referee is not bound by the initial determination of the local office), options for non-native speakers, what to do if unable to attend the scheduled hearing etc.
18. One state makes available a video that guides participants through the process. This same video is periodically broadcast on local cable access channels for those without access to a VCR.
19. Researchers did not systematically gather information on whether each referee was admitted to the Bar. However, researchers concluded that the general public would most likely be unable to discern whether a particular referee was admitted to the Bar or not, based on how hearings were conducted.
20. While referees were not questioned systematically, impromptu self-descriptions of the role of the referee ranged from "neutral fact-finder" to "impartial mediator", to "defender of the fund". Naturally the perceived role was a factor in the tone that a particular hearing took.
21. In most cases, these preliminary statements were read or recited extremely rapidly. It was unclear whether this was the case due to time considerations, because referees felt that

this part of the hearing was perfunctory and participants would not derive much benefit from it anyway, to set a formal if not intimidating tone, or whether referees were simply not cognizant that much of the pre-hearing information was not being presented in lay terms at a speed where first-time participants could understand and make use of the information.

22. This includes hearings where an employer sent a claims manager or attorney as the sole representative.

23. Hearings discussed from this point on are separation hearings which both parties attended.

24. For nonseparation hearings which involved questions of continuing eligibility, the nature of documentation that claimants brought included resumes, copies of letters sent to perspective employers, copies of paychecks, and tax documents.

25. While character witnesses may not strengthen the claimant's case, they may heighten the claimant's sense of confidence in going into the hearing, a factor that was not able to be measured.

26. Although this is not information that participants are likely to be aware of.

27. The greater prevalence of witnesses among employers may be, in part, due to definitional issues in this case study. Claimants who were represented were not considered to be acting primarily as witnesses, in contrast to any individuals who gave testimony for a represented employer, who were considered witnesses.

28. Information about the effectiveness of documentation and witnesses and the relative weight that was attached to particular evidence was derived from conversations with referees after a hearing took place. These conclusions are observations, and are statistically significant findings.

29. See 397 U.S. 254 (1970).

30. Several states went further than informing people of their right to counsel by including phone numbers of legal aid services and other programs that provide representation to indigent clients free of charge.

31. Legal representation was defined in the ACUC study to include attorneys, paralegals, law students, and law clerks. "Nonlegal" representation was a catch-all term for all other categories, including payroll firms, for employers, and union representatives, friends, or family members for claimants.

32. On no occasions did a representative for the claimant attend without the claimant being present.

33. A considerable number of questions remain unanswered about the practices of third-party claims management firms or payroll firms who tended to represent employers at lower-level

unemployment appeals hearings in this study. This includes questions on how contractual arrangements work (i.e. whether these firms get paid for successfully winning cases or simply by the volume of hearings they participate in.).

34. The actual number is likely to be higher, as this information was not able to be obtained on each hearing that observers attended.

35. Analysis of the impact of representation on appeals hearing outcomes was limited to separation hearings in which both parties participated in order to exclude the independent effect of non-participation on outcomes.

36. In observed appeals, employers *actually* won more frequently when they were represented (17 out of 31 cases) than when they were unrepresented (48 out of 99 cases). As noted, however, these results were not statistically significant.

37. Of separation hearings where both parties participated, claimants *actually* lost more frequently (8 out of 12 occasions) when they were represented than when they were unrepresented (58 out of 119). As noted, however, these results were not statistically significant.

38. Overall, legal representation was observed in only 19 out of 284 cases.

39. In other words, when looking at the overall UI appeals system, representation may have a measurable impact that could not be discerned through observations of the small sample of cases at issue here.

40. It is not clear whether on these occasions the employer representative failed to inform the employer that a particular witness should be present, or whether the employer chose not to send the particular witness.

41. Unrepresented claimants registered objections in only 7 percent of cases, whereas represented claimants registered objections 64 percent of the time. Claimants who were unrepresented also brought documents to the hearing only 20 percent of the time, but represented claimants brought documentation 50 percent of the time.

42. Employers also brought witnesses in 37 percent of cases when unrepresented, and 94 percent of cases when represented. As stated earlier, the greater prevalence of witnesses among employers may be, in part, due to definitional issues in the case study.

43. Rural states tended to conduct a greater proportion of hearings by telephone than did more urban states.

44. In addition to hearings where both parties participated by telephone, these percentages also include hearings in which one party participated in person at the local office in the presence of the referee, while the other party participated by telephone (hereafter referred to as "mixed hearings").

45. If this request were made, a hearing would then be scheduled at the local office most convenient for the party who did not request the in-person hearing.

46. Some states will only honor this request if the parties are separated by a substantial geographic distance.

47. It should be noted that overall, in separation hearings which both parties attended, researchers questioned the employer's credibility 12 percent of the time, and the claimant's credibility 10 percent of the time. There was no statistical difference in the frequency that credibility was an issue between phone hearings and in-person hearings. Researchers recorded that there was a question of credibility only when it was not evident that the person testifying was telling the truth or not. In other words, if a participant was clearly not telling the truth, then there was no ambivalence or question as to credibility, the participant was not credible and the referee could easily ascertain this.

48. When both claimant and employer attended, hearings were classified on the basis of the manner in which the primary spokesperson for either the claimant or the employer participated. Both parties participated in a total of 105 hearings.

49. Interstate phone hearings may present additional difficulties for participants. There may be time differences between where the witness is and where the referee is conducting the hearing. Also varying area codes can add to the complexity of making a connection.

50. In one state, there are various degrees of misconduct including simple, aggravated, and gross misconduct, each with varying penalty periods of disqualification. Some states had varying categories of non-disqualifying quits.

51. For example, some states allow benefits when a claimant quits work because of medical problems or urgent family circumstances (illness or death in family or child care problems). Often such benefits come from a general fund and are not chargeable to the employer. One state had a separate legal category non-disqualifying quits not related to the work ("valid circumstances").

52. Lower volume states were able to individualize the daily hearing schedules by having the scheduler estimate how long a case might take given the nature of the issue and the number of participants. Referees would then be given a greater or lesser number of cases for the day depending on the estimated complexity of the scheduled hearings.

53. In all surveyed states it is possible for claimants to participate in a flexible re-payment plan when an overpayment occurs.

54. Assisting claimants and employers in conducting cross-examination, is an area where, in theory, competent representation could be helpful.

55. When asked why they did not explain legal objections to participants, many referees cited the need to avoid appearing impartial and the need to avoid encouraging participants to object by providing them with a list of acceptable reasons for objecting.

56. One state also makes clear on the notice that the issue of being able and available for work is an issue that the agency can raise at any time.

57. All UI lower-authority appeals hearings are considered de novo hearings, whereby the referee is not bound by the decision that the initial fact finder made. The referee in a sense starts the process again, as if the initial fact finding had not taken place. Thereby claimants and employers need to present their case at the hearing as if for the first time, re-entering any evidence that had already been submitted to the fact finder at the local office.

58. In only three percent of two-party separation hearings did the claimant subpoena witnesses (for the employer the figure was even lower, one percent).

59. Most states had separate request forms which are supposed to be filled out and placed in the appeals file any time a party requests a subpoena, continuance, or postponement. Very few of these forms were encountered.

60. When it was left up to claimants to obtain their own interpreters, researchers witnessed neighbors, friends, and family members acting as interpreters.

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