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BY THE U.S. GENERAL ACCOUNTING OFFICE

Report To The Secretary Of Labor

Labor Needs To Improve Its Oversight Of New Hampshire's Denials Of Unemployment Insurance Benefits

The Department of Labor, through its Employment and Training Administration's Office of Unemployment Insurance, is responsible for assuring that States operate an effective and efficient unemployment insurance program, including the prompt payment of benefits to eligible individuals. In reviewing the New Hampshire Department of Employment Security's administration of the program, GAO found that

- numerous questionable or erroneous denials of benefits were made by local officials and the Appeal Tribunal and
- New Hampshire gave little training and performance feedback to local office and Appeal Tribunal personnel.

In addition, Labor's quality appraisal system used to monitor a State's appeals process did not provide sufficient information for States to improve performance. GAO recommends that Labor assume a more active role in overseeing New Hampshire's processes for determining whether individuals are eligible for benefits.



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UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

HUMAN RESOURCES
DIVISION

B-205075

The Honorable Raymond J. Donovan
The Secretary of Labor

Dear Secretary Donovan:

At the request of former Senator John A. Durkin, we reviewed selected aspects of the unemployment insurance program administered by the New Hampshire Department of Employment Security (DES). The principal area of concern dealt with the denials of unemployment insurance benefits to those who claim they are entitled to benefits. To respond to the request, we reviewed the two primary processes--nonmonetary determinations and appeals--that could result in benefit denials.

Our review was directed toward determining whether (1) eligible applicants were being denied unemployment benefits and (2) complaints about the appeals process were valid. In addition, we made a limited review of the Department of Labor's quality appraisal program, which was used for monitoring New Hampshire's administration of the unemployment insurance program.

Our findings regarding New Hampshire's program are detailed in the appendix. In summary, we found that:

--DES has denied unemployment compensation benefits to many eligible claimants. Based on our statistical sample from the 3,951 denial actions issued during July, August, and September 1980, we estimate that about 17 percent (684 cases +5 percent) of the denials were questionable or erroneous. Inadequate factfinding by local unemployment office personnel was the primary factor contributing to the problem. DES has instituted a training program which should improve the performance of local office personnel. Additional guidance, however, is still needed to help the local certifying officer arrive at decisions on such issues as what is misconduct and what constitutes an adequate search for work.

--Through its appeals process, DES has denied benefits to a substantial percentage of eligible claimants. Our review of a random sample of 50 appeal cases showed that in 13 cases (26 percent) the decision to deny benefits was questionable. Our review of another sample of 21 appeal cases withdrawn or dismissed 1/ before a hearing showed that in 5 cases (24 percent) the dismissal or withdrawal should not have been allowed because the original decision denying benefits contained apparent errors. The relatively high percentage of questionable decisions is due primarily to a tendency of DES personnel to disregard claimants' statements that would establish eligibility. In this regard, DES needs to provide additional training and guidance to Appeal Tribunal members.

In addition, the quality appraisal system Labor uses to monitor a State's appeals process does not give States sufficient information to help them improve performance. Furthermore, based on our review of benefits denied by DES, we believe that Labor should assume a more active role in overseeing New Hampshire's processes for determining whether individuals are eligible for benefits.

BACKGROUND

The Department of Labor, through its Employment and Training Administration's Office of Unemployment Insurance, is responsible for assuring that States operate an effective and efficient unemployment insurance program, including the prompt payment of benefits to eligible individuals. The mission of the Office of Unemployment Insurance includes providing leadership and technical assistance to State agencies in administering the laws, assuring prompt and efficient payment of benefits and allowances, promoting improvements in State unemployment insurance laws and allowances, and assuring that benefit payments comply with applicable provisions of State law.

Labor's quality appraisal program is the primary means for monitoring State agencies administering the unemployment insurance program. The program is intended to assess the quality of activities in all State programs by determining whether States are meeting goals for these activities.

1/An individual may withdraw an appeal request any time before a scheduled hearing. If an individual does not appear for a scheduled hearing, the appeal is dismissed.

The appraisal system, after several years of testing, was fully implemented in fiscal year 1978. Each State undergoes a quality appraisal every year. Each Labor regional office conducts about one-third of the appraisals on a rotating basis. States not receiving a Labor appraisal conduct a self-appraisal. The results of all appraisals are forwarded to Labor's national office and published in an annual report. The appraisals are intended to measure performance and timeliness in several areas involving the administration and operation of the benefit claims, appeals, and tax processes.

The findings in this report were discussed with Employment and Training Administration headquarters officials, and their comments are included where appropriate.

APPRAISAL SYSTEM FOR NONMONETARY DETERMINATIONS

The appraisal system for nonmonetary determinations relies primarily on making inferences about the quality of the determination by examining the documentation for certain specified characteristics. The system's emphasis is primarily on the process leading up to the decision to approve or deny benefits, rather than on the decision itself. This implies that, if the factfinding is done properly and completely, the decision will be correct. The current system, however, does not place enough emphasis on the actual decisions and could result in acceptable scores for wrong or questionable decisions.

Under the appraisal system, nonmonetary determinations are reviewed for such factors as: were the proper issues identified, were the issues completely covered during the factfinding, was the information obtained specific enough, and were the parties involved given opportunity for rebuttal. The maximum possible score is 105 points, and the minimum acceptable score is 70 points. Depending on the issues involved, the overall desired achievement level is that 75 to 80 percent of the determinations reviewed should score 70 points or more. As shown below, in fiscal year 1980 New Hampshire met the desired level of achievement in cases involving separation issues but did not meet it in cases involving other issues.

Nonmonetary Determination Performance
Percent of Cases Acceptable

	<u>Separation issues</u>	<u>Nonseparation issues</u>
New Hampshire	79.6	76.2
Desired level of achievement	75	80
National ranking	(a)	44

a/Not available.

Under this system, incorrect or questionable decisions could receive acceptable scores. For example, one section of the determination deals with whether the decision is in accord with the facts and the State's laws and policies. If it is not, 20 points are subtracted from the point score; no points are added for a correct decision. Consequently, it is possible to receive an acceptable score (70+ points) with an incorrect decision. This is illustrated on page 13 of the appendix, where proper factfinding determinations were made involving labor disputes, but the State law was misapplied.

We discussed this matter with Employment and Training Administration headquarters officials, who agreed that an incorrect decision should not be able to receive an acceptable score. They added that a new scoring system was being tested and the changes would be incorporated in the fiscal year 1983 quality appraisal program.

Another section of the appraisal deals with the completeness of the factfinding analysis, which has a maximum score of 60 points. According to Labor guidelines, a determination would still score one-half for this factor as long as the adjudicator collected some information on the issue, even if the information was not sufficient to justify the decision. As discussed in the appendix, we noted many examples of determinations based on insufficient information.

APPRAISAL SYSTEM FOR APPEALS

The appraisal system for appeal hearings is similar to the one for nonmonetary determinations in that it relies primarily on making inferences about quality by evaluating the hearings for certain characteristics. While these characteristics seem appropriate, we believe improvement is needed in communicating appraisal results to the State agencies.

Labor has established performance standards which each State is expected to meet in conducting appeal hearings. The appraisal system attempts to measure the degree to which States meet these standards by grading the hearings according to certain criteria and guidelines. The desired level of achievement for the 1980 appraisal was that at least 80 percent of the hearings reviewed should score a minimum of 80 percent of the possible points.

The 1980 appraisal was done by Labor's headquarters office. Labor evaluated 20 appeal hearings as part of the 1980 quality appraisal for New Hampshire. Of these 20 appeals, only 11 (or 55 percent) received the minimum desired score of 80 percent. This was the lowest rating achieved by any State.

Each State is informed of its overall rating; i.e., the percentage of cases receiving at least the minimum score. The score, however, does not provide any information which the States could use to improve their performance since it is an overall summary of the ratings assigned to many different aspects of appeal hearings. It does not indicate which areas were deficient or why.

The results of the fiscal year 1980 appraisal were sent to DES on April 28, 1980. Labor, however, did not provide any explanation of the results. We discussed the appraisal system for appeals with Employment and Training Administration headquarters officials, who told us that the quality appraisal system was designed not to identify specific problems, but to flag areas needing further analyses. They said the States are responsible for determining the extent and causes of the problems and developing a plan for correcting them. According to the officials, the corrective action taken or planned is generally outlined in the States' subsequent year's budget request.

In its Program and Budget Plan for fiscal year 1981, DES said it had not been given sufficient information to determine what needed to be improved in the appeals process. Labor later sent the State copies of the individual scoring sheets, but without an overall explanation. While the scoring sheets indicated which areas were rated low, they generally did not explain why. After reviewing the scoring sheets, New Hampshire prepared a corrective action plan, dated October 7, 1980, for improving its appeals process. The plan, however, deals primarily with the manner of handling appeal case information exhibits (one of the areas in which DES consistently received low scores) and in our opinion will not correct the problems we noted.

CONCLUSIONS AND RECOMMENDATIONS

Based on our review of New Hampshire's nonmonetary determinations and appeals process, we believe that Labor needs to do more to help New Hampshire improve its administration of the unemployment insurance program. Labor's quality appraisal system has indicated the need for improvement in these areas, and although New Hampshire has developed corrective action plans, we believe additional actions are necessary.

As discussed in the appendix, many eligible claimants have been denied benefits at both the local office level and the appeal level. DES' action plan to develop and provide training for local office personnel, when implemented, should help improve performance. We believe, however, that training also is needed for Appeal Tribunal members. Although Labor has sponsored such training for several years, DES has not taken advantage of it.

Over the past several years, DES has lost a number of experienced staff through retirement. We believe a system is needed to give new and less experienced certifying officers, local office interviewers, and Appeal Tribunal members information on why decisions are reversed in the appeals process and in the courts. Such information could be a useful learning tool for improving performance and reducing the number of erroneous or questionable denials.

We also believe that Labor could be more effective in bringing about needed improvements in the States' appeal performance through Labor's quality appraisal system. Publishing an overall ranking does not give the States the information needed to improve performance. Once Labor has gone through the process of reviewing a State's appeal performance, it should be able to provide specific information on deficiencies found during the appraisal and to suggest corrective actions.

We recommend that you work with DES to

- provide training to Appeal Tribunal members, either internally or through Labor training courses;
- establish a system for providing feedback to local office personnel on the reasons decisions are reversed by Appeal Tribunals; and
- establish a system for providing feedback to Appeal Tribunal members and local office personnel on rulings of the New Hampshire courts.

We also recommend that you revise the quality appraisal system for the appeals process to give States specific information on deficiencies found and suggestions for correcting them.

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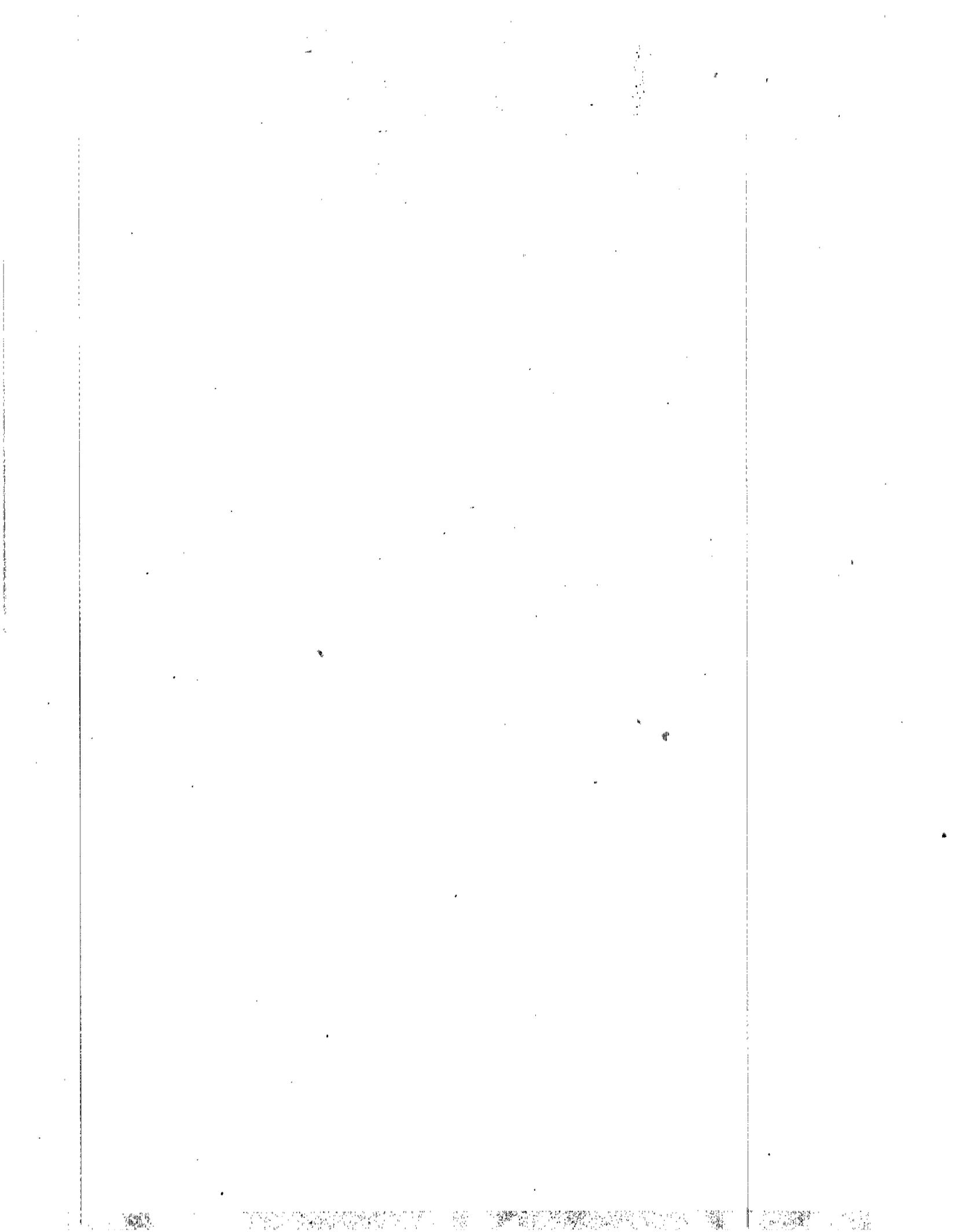
As you know, section 236 of the Legislative Reorganization Act of 1970 requires the head of a Federal agency to submit a written statement on actions taken on our recommendations to the House Committee on Government Operations and the Senate Committee on Governmental Affairs not later than 60 days after the date of the report and to the House and Senate Committees on Appropriations with the agency's first request for appropriations made more than 60 days after the date of the report.

We are sending copies of this report to the chairmen of the four above-mentioned committees and the cognizant legislative committees. Copies are also being sent to the Director, Office of Management and Budget, and other interested parties.

The Department's courtesy and cooperation during our review is appreciated.

Sincerely yours,


Gregory J. Ahart
Director

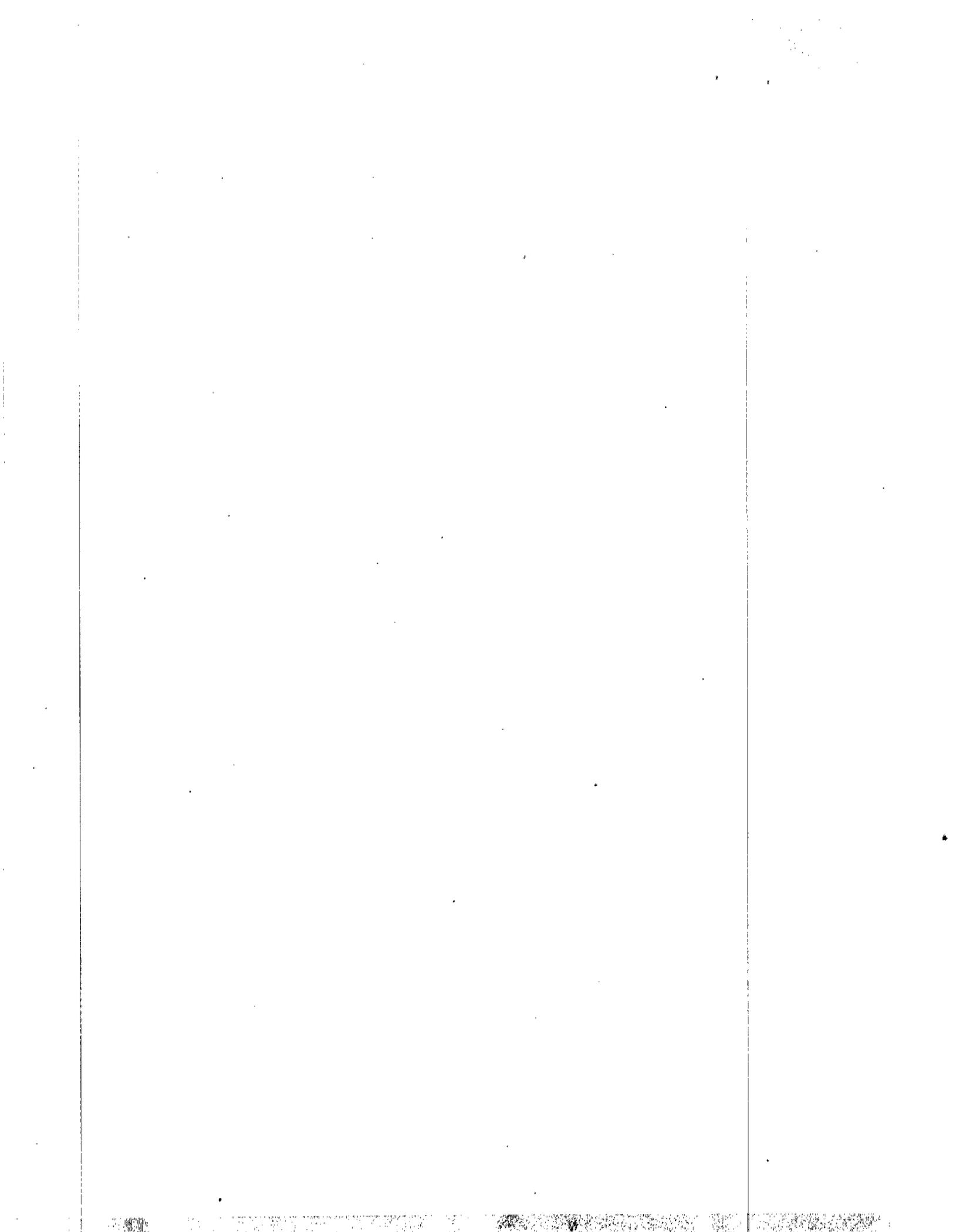


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ABBREVIATIONS

DES	New Hampshire Department of Employment Security
GAO	General Accounting Office



LABOR NEEDS TO IMPROVE ITS OVERSIGHT
OF NEW HAMPSHIRE'S DENIALS OF
UNEMPLOYMENT INSURANCE BENEFITS

INTRODUCTION

On June 30, 1980, former Senator John A. Durkin requested that we review selected aspects of the unemployment insurance program administered by the New Hampshire Department of Employment Security (DES). The principal area of concern dealt with the denials of unemployment insurance benefits to those who claim they are entitled to benefits. In later meetings with the Senator's office, we agreed to determine whether (1) eligible applicants were being denied unemployment benefits and (2) complaints about the appeals process were valid. We also made a limited review of the timeliness of benefit payments and found this was not a problem.

We did not examine two other issues raised by the former Senator--what is being done to help recipients of unemployment insurance find jobs and whether the business community is satisfied with the agency's services--because we reported on them in an earlier report, "The Employment Service--Problems and Opportunities for Improvement" (HRD-76-169, Feb. 22, 1977).

Background

Unemployment insurance was established in 1935 as part of the Federal-State Employment Security Program authorized under the Social Security Act (42 U.S.C. 501) and the Wagner-Peyser Act (29 U.S.C. 49). The primary objective of unemployment insurance is to insure most workers against lost wages by providing temporary compensation for those who lose their jobs. The program also helps stabilize the economy by maintaining some purchasing power of laid-off workers and establishes economic incentives to encourage employers to maintain steady employment levels.

At the Federal level, the Department of Labor's Employment and Training Administration administers the employment security program, which provides employment services and unemployment compensation. This agency provides guidance and technical assistance to the 50 States, the District of Columbia, and Puerto Rico, which operate a total of about 1,700 local unemployment insurance offices.

Funding

Unemployment insurance is financed by Federal and State taxes paid by employers. The Federal tax rate is currently 3.4 percent of the first \$6,000 of an individual's earnings from employers

covered by the Federal Unemployment Tax Act (26 U.S.C. 3301). The law provides a 2.7-percent credit against the 3.4-percent Federal tax--an effective Federal tax rate of 0.7 percent--to employers who pay State unemployment taxes under programs approved by the Secretary of Labor.

State unemployment taxes are deposited in each State's trust fund, and they are used for the first 26 weeks of compensation and half the cost of Extended Benefits. ^{1/} Federal taxes are deposited in various Federal unemployment accounts, which are collectively called the Unemployment Trust Fund. This fund is used to (1) pay all the program's administrative costs, (2) pay one-half of Extended Benefits, and (3) maintain a loan fund from which States may borrow to pay compensation if their trust fund accounts become insolvent. Other Federal programs that provide compensation for specific groups of unemployed workers are financed by Treasury general funds. In 1980, \$14.1 billion in unemployment compensation was paid to about 9.8 million recipients throughout the United States.

New Hampshire Department of Employment Security

In New Hampshire, DES administers both the employment service and the unemployment compensation programs under Federal grants provided annually through the Employment and Training Administration. DES is headed by a Commissioner appointed by the Governor for an indefinite term. During calendar year 1980, the agency's administrative costs were \$7,069,077. As of January 31, 1981, DES had 332 full-time employees for its central office in Concord, New Hampshire, and 11 field offices throughout the State.

In 1980 New Hampshire had an annual labor force of 459,000 and an average annual unemployment rate of 4.3 percent, or about 20,000 people. During 1980 DES paid out \$30 million in unemployment compensation for 360,500 weeks claimed by 43,200 people who qualified for benefits during the year.

Who is eligible to receive unemployment compensation benefits?

The Social Security Act allows each State to set its own eligibility standards and benefit amounts. In New Hampshire, individuals must be totally or partially unemployed; must register for employment with DES; must be ready, willing, and able to accept

^{1/}This program, established by the Federal-State Extended Unemployment Compensation Act of 1970 (Public Law 91-373, title II; 26 U.S.C. 3304 note), provides for an additional 13 weeks of benefits.

suitable work; and must be available for and seeking permanent full-time work for which they are qualified.

An individual must also have earned at least \$1,200 during the prior year with at least \$600 in each of two calendar quarters. Eligibility is not automatic. Individuals must report to DES to file a claim as soon as they become unemployed and continue to report biweekly on the specific day designated.

To receive benefits, unemployed persons must file their initial claim at one of the 11 DES offices no later than

- the first day of the week for which benefits are claimed;
or
- the third day after becoming unemployed, not counting days when the department offices are closed; or
- the day previously assigned for filing the claim, or
- if filed at an itinerant office, 1/ the first day that services are provided at such office after becoming unemployed.

How much unemployment
compensation can an
eligible person receive?

New Hampshire generally provides 26 weeks of unemployment compensation. An additional 13 weeks of compensation is provided during periods of high unemployment under the Extended Benefits program. New Hampshire has a uniform benefit year which runs from April 1 until the following March 30. The amount of compensation an unemployed individual may receive depends on the individual's earnings in a base period, which is the calendar year immediately preceding the benefit year in which a claim is filed. For example, the weekly benefits for a person filing a claim in January 1981 are based on calendar year 1979 earnings, while the benefits for a person filing in April 1981 are based on calendar year 1980 earnings.

The weekly benefits vary depending on an individual's earnings during the base period. They range from \$21 for those with earnings of \$1,200 to \$114 for those with earnings of \$10,500 or more.

1/An itinerant office is a place other than a local office where employment security services are provided on a scheduled part-time basis.

Scope and methodology

Our review was made primarily at the DES central office in Concord, New Hampshire. We reviewed New Hampshire's unemployment compensation laws and DES regulations, practices, and procedures and interviewed attorneys from the New Hampshire Attorney General's Office and New Hampshire Legal Assistance Corporation. We examined claimant records, correspondence, and reports and interviewed the DES Commissioner, Deputy Commissioner, Assistant Director of the Unemployment Compensation Bureau, Appeal Tribunal Chairmen, and other DES staff.

We also examined correspondence, records, and files at the Department of Labor's regional office in Boston and interviewed Employment and Training Administration headquarters and regional officials about DES operations.

Sampling methodology

We used statistical sampling techniques in evaluating the eligibility system and the appeals process. We sampled the non-monetary determinations resulting in denials for the 3-month period July through September 1980 to determine if the denials were supported by the facts and in accordance with New Hampshire law and regulations. These months were selected because they were the most recent for which copies of all the determinations were available at DES' central office. Thus, we were able to sample a universe which included the determinations issued by all local offices. We did not review monetary determinations because the possibility of error in this area is negligible. The results of this review are discussed on pages 6 to 16.

We also analyzed a randomly selected number of Appeal Tribunal decisions for the 9-month period January through September 1980 to determine if individual claimants were being given a fair hearing and if the decisions were supported by the hearing records. These months were the most recent for which we could be assured the hearing cycle would be completed. We were able to sample a universe which included current decisions issued by all three Tribunal Chairmen. The results of this analysis are discussed on pages 16 to 24.

The following is a description of the detailed procedures we used in both sets of analyses.

Nonmonetary determinations--Statistical sampling enabled us to draw conclusions about the universe (nonmonetary determination denials for July, August, and September 1980) based on information from a sample of that universe. The results from a statistical sample are always subject to some uncertainty (i.e., sampling

error) because only a portion of the universe has been selected for analysis. Our sample size was large enough to keep the sampling error small. The sampling error consists of two parts: confidence level and range. The confidence level indicates the degree of confidence that can be placed in estimates derived from the sample. The range is the upper and lower limits between which the actual universe value may be found.

To establish the size of our universe, we obtained lists of all the nonmonetary determination denials issued during the 3-month period. The lists contained 3,952 denials. The quarterly report submitted by the agency to the Department of Labor reported 3,958 denials for the period. Because the difference (six) was insignificant, we did not reconcile the two.

We randomly selected a sample of 220 nonmonetary determination denials from the universe and found one denial listed in error; i.e., although contained on the computer-generated list, no such denial was actually issued. DES officials stated that the erroneous list was probably the result of a keypunching error. Since we had no reason to believe that such errors were significant in the universe, we made no adjustment other than to delete the erroneous list from our sample and from the universe. Consequently, our final sample consisted of 219 denials from a universe of 3,951.

In analyzing each denial in our sample, we reviewed all the documentation relied on by the certifying officer in making the determination that the claimant was not eligible for benefits, along with the written determination itself. The documentation consisted of the claimant's handwritten statement, the information submitted by the employer, the local office interviewer's comments based on interviews with the claimant and the employer, and any other information obtained, such as doctors' statements. The written determination contained the certifying officer's conclusions based on this documentation and the specific reason why benefits were being denied. We discussed each denial we believed to be erroneous or questionable with officials in DES' Unemployment Compensation Bureau.

We then projected the results of our review to the universe of 3,951 denials issued in July, August, and September 1980. Based on our sample size, we are 95-percent confident that the true percentage of erroneous or questionable denials in the universe would be about 17 percent (684 cases \pm 5 percent). Thus, if all the denials in the universe were analyzed, the chances would be 95 in 100 that the actual percentage of erroneous or questionable denials would have been between 12 and 22 percent.

Since most benefit denials in our sample were based on one or more of five different reasons, we also projected the results

of our review to a universe limited to denials issued for these reasons: (1) voluntarily quit without good cause, (2) not available for work, (3) fired for misconduct, (4) refusal of suitable work, and (5) involved in a labor dispute.

Appeal Tribunal decisions--Because of the time and resources needed for analyses, we did not draw a sample large enough to project the results to the universe of all hearings with sufficient confidence. Nevertheless, we did select a random sample from the 3,709 requests for appeal hearings which had been received and numbered between January 1 and September 30, 1980.

Our sample consisted of the following types of appeals.

Hearing held and decision issued by Appeal Tribunal	50
Appeal request withdrawn or dismissed	21
Appeals involving interstate or out-of-State claims (note a)	<u>31</u>
	<u>102</u>

a/On interstate claims a hearing is held in another State and the records are sent to New Hampshire, where a decision is made. On out-of-State claims a hearing is held in New Hampshire and the records are sent to another State, where the decision is made.

We excluded the 31 appeals involving interstate and out-of-State claims from further analyses because in these cases DES is involved in only part of the process.

In analyzing sampled appeal decisions for which a hearing was held, we listened to the tape recording of the proceedings and reviewed all the documentation the Tribunal relied on in its deliberations as well as the Tribunal's written decisions. In analyzing each appeal which was withdrawn or dismissed, 1/ we reviewed all the documentation relied on by the certifying officer in making the determination that the claimant was ineligible for benefits, as well as the written determination. We discussed each decision we believed to be erroneous or questionable with the Tribunal Chairman for the hearing in question and with the DES Deputy Commissioner.

NEW HAMPSHIRE HAS DENIED
BENEFITS TO ELIGIBLE CLAIMANTS

DES has denied unemployment compensation benefits to many eligible claimants. Based on a statistical sample of 3,951 denial

1/An individual may withdraw an appeal request any time before a scheduled hearing. If an individual does not appear for a scheduled hearing, the appeal is dismissed.

actions issued during July, August, and September 1980, we estimate that about 17 percent (684 cases +5 percent) of the denials were questionable or erroneous. In our opinion, inadequate factfinding by local unemployment office personnel was the primary factor contributing to the problem.

Procedures for determining initial eligibility

When an unemployed individual opens a new claim, the local office obtains the person's social security number and the name of his previous employer, and assigns the person a date to return. On the same day, the local office submits a wage request form to the central office and notifies the previous employer that a claim has been filed. The employer has 7 days in which to return the form if he believes the claimant is not entitled to benefits.

The wage request form is completed by the central office and returned to the local office before the claimant's assigned return date. This form shows the wages earned by the claimant during the base year and the weekly unemployment compensation benefit amount.

When the claimant returns, the local office interviewer reviews the claimant's wage history and the circumstances causing the unemployment, particularly if the employer has objected to the payment of benefits. If there are no questions regarding eligibility, benefits are authorized and the claimant is assigned a permanent biweekly reporting date.

Nonmonetary determinations

If eligibility questions arise during the initial interview or on any subsequent reporting date, the interviewer and the claimant complete a factfinding report. The report is used to collect the information needed, from all sources, to determine whether the claimant is eligible for benefits. The factfinding report is submitted to the local DES certifying officer, who rules on the claimant's eligibility. This decision, called a nonmonetary determination, is mailed to the claimant. If the certifying officer rules that the claimant is not eligible, the claimant is informed of his right to appeal the decision.

Nonmonetary determinations are not based on monetary issues--i.e., whether a claimant has earned sufficient wages to be eligible--but on such issues as why the claimant separated from work and whether the claimant is available for and actively seeking work.

The more common issues which could lead to a denial of benefits, and the corresponding disqualification periods, are listed below.

Common Reasons for Disqualification

<u>Nonmonetary issue</u>	<u>Denial period</u>
Voluntarily quit without good cause	Indefinite
Fired for misconduct	Indefinite
Not available for work	During period not available
Not actively seeking work	Until again seeking work
Refusal of suitable work	4 weeks

A number of other issues could also arise, the most common of which is late filing. With some exceptions, an individual is not entitled to benefits for any period for which claims were not filed on a timely basis.

New Hampshire raised fewer issues than most States but denied benefits more frequently

New Hampshire is less likely than most States to raise a potentially disqualifying issue, but much more likely than most to deny benefits when an issue is raised.

The Department of Labor publishes statistics on nonmonetary determinations issued by each State. For fiscal year 1979, the most recent year for which the information was available, New Hampshire raised potentially disqualifying issues less frequently than most other States, but such a high percentage of these resulted in denials that New Hampshire denied benefits more frequently than most other States.

In fiscal year 1979, New Hampshire issued 14,677 nonmonetary determinations--the equivalent of 57 determinations for every 1,000 claimant contacts. The national average was about 71 determinations per 1,000 contacts. Of the 14,677 nonmonetary determinations, 10,108 resulted in the denial of unemployment compensation. New Hampshire's ratio of denials to total determinations (69 percent) was the ninth highest in the country. The national average was 43 percent.

The net result was that, although New Hampshire ranked 31st in terms of the frequency with which nonmonetary determinations were issued, it ranked 13th in terms of the frequency with which benefits were denied. The 10,108 denials were the equivalent of 39 denials for every 1,000 claimant contacts. The national average was 30 denials per 1,000 contacts.

According to the fiscal year 1979 data, New Hampshire was less likely than other States to raise issues requiring extensive fact-finding. Separation from work issues (i.e., voluntarily quit without good cause or discharge for misconduct) often require extensive contact with the claimant and the employer in order to determine whether a claimant is eligible for benefits. Resolving these issues requires more local office personnel time and expertise than the relatively straight-forward, clear-cut issues of determining if a claim is filed on time or if a claimant has received disqualifying or deductible income. The following table shows New Hampshire's rank among other States in terms of both the frequency with which these issues were raised and the frequency with which they resulted in denials.

Determinations and Denials
for Selected Issues in Fiscal Year 1979

<u>Issue</u>	<u>Total determinations rank</u>	<u>Total denials rank</u>
Voluntarily leaving	38	36
Misconduct	44	40
Deductible income	14	12
Reporting requirements	12	7

The table shows that most States raised the issues of voluntarily leaving and misconduct more frequently than did New Hampshire, while the reverse was true for the issues of deductible income and reporting requirements. As discussed below, our review showed that New Hampshire issued many erroneous or questionable denials involving issues requiring extensive factfinding even though it does not raise these issues as frequently as other States.

New Hampshire has issued many
questionable or erroneous denials

During July, August, and September 1980, New Hampshire issued 3,951 nonmonetary determinations denying benefits to claimants. Based on our review of a sample of these denials, we estimate that about 17 percent (684 cases +5 percent) of the denials were questionable or erroneous.

We reviewed a random sample of 219 denials issued during these 3 months, or 5.5 percent of the total denials. We considered a denial to be questionable if the records did not contain sufficient information to justify it. We considered a denial erroneous if the decision was contrary to New Hampshire law. In 37 instances we found either that benefits should not have been denied (12 cases) or that the case records did not contain enough

information to justify a denial (25 cases). In the latter cases, proper exploration of all the facts might have shown the claimant to be eligible for benefits. The following table summarizes the denials issued during this 3-month period and the results of our analysis.

Nonmonetary Determination Denials
July-September 1980

<u>Reason for denial</u>	<u>Total denials</u>	<u>GAO sample</u>			<u>Total</u>
		<u>Total</u>	<u>Ques- tionable</u>	<u>Errone- ous</u>	
Voluntarily quit	1,137	62	9	2	11
Availability for work	961	52	6	3	9
Misconduct	351	25	8	-	8
Refusal of suitable work	133	7	2	3	5
Labor disputes	<u>91</u>	<u>8</u>	<u>-</u>	<u>2</u>	<u>2</u>
	2,673	154	25	10	35
Late filing	660	34	-	2	2
All others	<u>618</u>	<u>31</u>	<u>-</u>	<u>-</u>	<u>-</u>
Total	<u>3,951</u>	<u>219</u>	<u>25</u>	<u>12</u>	<u>37</u>

As noted, certain disqualifying issues require more factfinding and judgment by the local office personnel than other issues. In our sample, 35 of the 37 erroneous or questionable denials involved five such issues: voluntarily quit, availability for work, fired for misconduct, refusal of suitable work, and involved in labor disputes.

These five issues accounted for 2,673 of the 3,951 denials issued during our sample period. Based on our review, we estimate that between 453 (16.9 percent) and 796 (29.8 percent) of these 2,673 denials were erroneous or questionable.

Reasons for poor performance

Inadequate factfinding at the local offices was the primary reason for the large percentage of erroneous or questionable denials. Local office personnel are responsible for identifying potentially disqualifying issues and for obtaining all the information needed to resolve them. Our sample contained many instances where information essential to determining eligibility was not obtained, but denials were issued. Some examples are discussed below.

Example A--A claimant's last day of work was Monday, July 14, 1980. The claimant, who worked on an on-call basis, said his

supervisor had advised him that more work would be available. On Thursday, July 24, the claimant opened a claim with DES, stating that he was told on July 23 that there was no further work. The local office ruled that the claimant was laid off as of July 14 and denied benefits for the week ending July 26 because the claimant filed on Thursday instead of Monday. DES officials agreed that the denial was incorrect. They stated that "common sense has been established that we don't count days for late filing until the claimant is and knows he is laid off." The records for this case do not indicate any attempt by DES local office personnel to verify from the employer the date the claimant was told he was laid off.

Example B--A claimant was denied benefits by a local office on the grounds that he was discharged for misconduct. On his last day of work, the claimant was told at 4:00 p.m., the end of his workday, that he was to work overtime that night assisting employees in another department. The claimant refused the overtime, stating that he had already made other commitments for that evening. The employer then discharged the claimant for insubordination. The claimant told the local office personnel that the requested overtime work was not in his written job description, that he had not been given any previous warnings about his work performance, and that he had not been warned that he could be fired for refusing the overtime assignment.

DES officials agreed that the factfinding leading up to this denial was inadequate. Many questions relevant to determining whether misconduct occurred were left unanswered. For example:

- Was this a single occurrence?
- Was the employee aware of the possible result of his action?
- Was the requested overtime part of his duties?
- Why was the claimant expected to be available if the regular department workers were not?

With proper factfinding, these questions could have been answered. Without the answers, the denial appears questionable.

Example C--A claimant who had been receiving benefits for several weeks planned to be on vacation during a week in which she was scheduled to file her continued claim for the preceding 2 weeks. She therefore contacted the local office before going on vacation and was told that she could file on her next assigned date and that she would be denied benefits for the week she was on vacation; i.e., the week ending July 26.

The claimant returned from vacation on Sunday, July 27, and, when she later filed her claim, stated that she was available for work on July 27. The local office properly denied benefits for the week ending July 26 but also denied benefits for the week ending August 2, on the grounds that her return from vacation the previous Sunday meant that she had not been available every day of that week. The claimant's statement that she was available for work on Sunday, July 27, was ignored. DES officials agreed that the denial of benefits for the week ending August 2 seemed improper, even if the claimant had not been available on the preceding Sunday.

Example D--A claimant quit his job when his hours of work were changed, his job duties were changed, and his salary was reduced by 20 percent. The local office denied benefits on the grounds that the claimant did not have good cause for quitting his job. The claimant appealed the denial, and about 12 weeks after the claimant had become unemployed, the Appeal Tribunal issued a decision overturning the denial and awarding benefits. The decision was based on the same information available to the local office. We discussed the case with DES officials, who agreed that the initial denial was incorrect.

In addition to these examples, our review showed that contributing to the poor factfinding was a tendency by local office personnel to deny unemployment compensation benefits based on statements made by the claimant's previous employer without (1) giving the claimant an opportunity to respond to the charges or (2) requiring corroboration when the claimant specifically denied the charges. This violates the department's stated policy, which is that the burden of proof is on the party making the disqualifying statements.

Example E--A claimant had been receiving unemployment benefits for about 6 weeks when her former employer sent in a statement to the local office saying that the claimant had walked out on her job. The local office contacted the claimant, who denied the charge. The claimant said she had worked on an on-call basis and her employer had stopped calling her. The local office then contacted the employer, who stated that the claimant walked off the job when asked to do some work during her lunch period. The day after receiving this allegation, the local office issued a determination denying benefits and demanding restitution of benefits already paid. The claimant was given no opportunity to respond to the charges made by her former employer.

The claimant appealed the denial. At the hearing she testified that the company did not pay employees for their lunch period and that she offered to do the work as soon as the half hour was over. She said the employer instead sent her home and had not

called her for work since then. The employer, although notified of the hearing, did not appear. The Appeal Tribunal overturned the denial and awarded benefits on the grounds that the claimant did not voluntarily quit, but was discharged without good cause.

We discussed this case with DES officials, who agreed that the initial denial was incorrect.

Example F--A claimant was denied benefits on the grounds that she had been fired for misconduct. The claimant stated that she was fired because of a personality conflict with the new general manager. She said she had always done her job to the best of her ability, had not received any prior warnings about her performance, and had always arrived at work on time. The employer stated that she was fired because she had a poor attitude, mistreated customers, and had almost lost a large order.

The employer's version of the circumstances was accepted even though he did not provide any details concerning his allegations. Department officials agreed that the factfinding in this case was poor. The Assistant Director of the DES Unemployment Compensation Bureau said he was disturbed by the poor factfinding evident in most of the 37 cases we questioned and was particularly disturbed by the number of times employers' statements were accepted even though disputed by claimants or without giving claimants an opportunity for rebuttal.

State law misapplied--In addition to these instances of poor factfinding, we also noted an area in which DES misapplied State law. Under New Hampshire law, an individual who participates in a strike cannot receive unemployment compensation. The law specifically states, however, that this applies only if the individual's unemployment is caused by a strike at the location where he was employed. In two instances in our sample, this law was misapplied.

On July 10, 1980, a union local went on strike, but only at selected locations. The union reached agreement with employers allowing work to continue uninterrupted at other locations. In two of our sample cases, union members at locations not on strike were laid off in August 1980. One was laid off temporarily pending the arrival of additional materials at the construction site. The other was laid off because of lack of work, while other union members continued working at the site. Neither employer claimed that the layoffs were caused by a labor dispute.

In both cases the individuals were denied unemployment benefits by the Manchester local office. The determinations denying benefits stated that the individuals were laid off because of lack of work, but then denied benefits on the grounds that the

claimants, as members of the union, would benefit from any settlement reached as a result of the strike. The justification for the denial was contrary to New Hampshire law, which states that, for benefits to be denied, the unemployment must be caused by a strike.

Because this decision was incorrect, we expanded our sample to determine how prevalent these errors were. During July, August, and September 1980, 91 denials were issued based on labor disputes. Of these, 43 denials, including the 2 discussed above, were issued in September 1980 by the Manchester local office. We reviewed all 43 denials and found an additional 7 cases, or a total of 9, where individuals who were laid off because of lack of work were improperly denied benefits. Eight of the nine denials were appealed and eventually reversed by the Appeal Tribunal.

DES officials agreed that the denials were improper. In certain issues, one of which is labor disputes, the determinations are not made by local office personnel, but by the Field Supervisors in accordance with central office policy. This is done to ensure uniformity between local offices. DES policy is that an individual is not eligible for benefits if he becomes unemployed because of a strike and refuses to cross a picket line.

In discussing these cases with the Field Supervisor and the Assistant Director of the Unemployment Compensation Bureau, we noted that the unemployment was not caused by a strike. The Field Supervisor said that he was aware of the requirements of New Hampshire law, but believed that, because all members of the union local would benefit from the strike, whenever they terminated work during the strike for any reason, they were disqualified from receiving benefits.

The Assistant Director for Unemployment Compensation Benefits stated that the denials in question were incorrect. He noted that mere membership in a striking union local is not sufficient grounds for denial of unemployment compensation benefits.

DES central office guidance and training

A lack of DES central office training and guidance has contributed to the poor factfinding at the local offices. In the past, DES gave little training in this area, relying instead on local office personnel learning from experience. Also since 1976, DES has lost the experience of several long-term employees through retirement, thus contributing to the problem and creating a greater need for training.

DES has recognized the problem and has acted to implement a training program. In a December 1979 response to a Labor regional office questionnaire concerning training needs, DES stated that personnel involved in nonmonetary determinations needed training in factfinding techniques, determination writing, State policy, decisionmaking, and Federal requirements. Furthermore, in a September 1980 memo to New Hampshire's Joint Committee on Review of Agencies and Programs, the DES Commissioner stated that since 1976 several long-term employees had retired. Consequently, DES now has local office managers with only 5 to 10, as opposed to 25 to 40, years of experience.

Because of the differences in State laws, the Department of Labor does not set forth specific criteria for nonmonetary determination training. Therefore, States must adapt general material to meet their specific needs.

To address the lack of training, in August 1979 DES appointed a training officer, who began developing a training program for local office personnel. At the time of our review, the training officer had developed and conducted two 3-day courses on factfinding techniques for local officer interviewers and one course on decisionmaking and determination writing skills for certifying officers.

Certifying officers, however, do not routinely receive feedback on the quality of their decisions. In fiscal year 1979, almost 30 percent of the denials issued by certifying officers were appealed to DES' Appeal Tribunal. This was the fourth highest appeal rate in the Nation. Under current department procedures, there is no system for informing certifying officers of the appeal results.

Conclusions

The training program instituted by DES should improve the performance of local office personnel. In view of the lack of experience and specific training criteria, it may be helpful for the DES central office to provide guidance through a precedents manual. As its name implies, a precedents manual is a compilation of decisions, court rulings, etc., which could help the certifying officer arrive at decisions on issues requiring judgment, such as what is misconduct and what constitutes an adequate search for work. In addition, such a manual could help ensure consistency between local office decisions. Furthermore, we believe that informing the certifying officers of the reasons for appeal reversals would help them improve their performance by pointing out, for example, instances where the law had been misapplied or the initial factfinding was deficient.

Recommendation

We recommend that the Secretary of Labor work with the New Hampshire Department of Employment Security to establish a system for providing feedback to local office personnel on the reasons decisions are reversed by Appeal Tribunals.

APPEALS PROCESS NEEDS IMPROVEMENT

Through its appeals process, DES has denied benefits to a substantial percentage of eligible claimants. Our review of a random sample of 50 appeal cases showed that in 13 cases (26 percent) the decision to deny benefits was questionable. In addition, our review of an additional sample of 21 withdrawn or dismissed appeal cases showed that in 5 cases (24 percent) the withdrawal or dismissal should not have been allowed because the original decision denying benefits contained apparent errors.

The relatively high percentage of questionable decisions is due primarily to a tendency of DES appeal personnel to disregard claimants' statements that would establish eligibility. DES also has no criteria for selecting part-time appeal personnel, and appeal personnel

- do not always fully explore issues that may have a positive effect on a claimant's eligibility,
- receive little training,
- do not receive feedback on cases decided in the courts, and
- do not provide feedback to local offices.

Our sample size was not large enough to statistically project our findings to the universe. However, as discussed below, we believe our findings indicate a need to improve the appeals process.

Appeals process

A claimant or an employer may request a hearing to appeal a local office eligibility determination. Each appeal is heard by a three-member Tribunal consisting of a Chairman, a labor representative, and a management representative. The Chairman is a full-time DES employee, while the labor and management representatives are appointed by the Commissioner. At the time of our review, there were 3 Chairmen, 20 labor representatives, and 21 management representatives.

A request for an appeal must be in writing and received by DES within 7 calendar days after the date the local office determination was mailed. The Appeal Tribunal schedules a hearing

generally within 30 days. This hearing is informal, and the appellant may bring witnesses, representatives, records, and any evidence needed to present the case fully. In New Hampshire, appeal hearings are held "de novo," which, according to DES officials, means that the Tribunal may consider all issues affecting a claimant's eligibility and not limit itself to the issues for which the claimant was denied benefits. 1/

Questionable decisions
of Appeal Tribunal

New Hampshire has only one administrative appeal level for unemployment compensation. An individual may request the Commissioner to reopen an appeal hearing, but only on the basis of fraud, mistake, or newly discovered evidence. Individuals not satisfied with a decision of the Appeal Tribunal generally must appeal to the Superior Court. Therefore, to avoid placing an unnecessary burden on the courts as well as on claimants, DES should do everything possible to ensure that the Appeal Tribunal's decisions are correct.

From January 1 to September 30, 1980, DES received 3,709 requests for appeal hearings. We selected a random sample of 102 such requests for review. Our sample consisted of the following types of appeals:

Hearing held and decision issued by Appeal Tribunal	50
Appeal request withdrawn or dismissed	21
Appeal involving interstate or out-of-State claims (note a)	<u>31</u>
	<u>102</u>

a/On interstate claims a hearing is held in another State and the records are sent to New Hampshire, where the decision is made. On out-of-State claims a hearing is held in New Hampshire and the records are sent to another State, where the decision is made.

We excluded the 31 appeals involving interstate and out-of-State claims from further analyses because in these cases DES is involved in only part of the process.

As noted previously, our analyses of the 50 cases in which an appeal hearing was held showed that in 13 cases (26 percent) the decision of the Appeal Tribunal to deny benefits was questionable because the Tribunal disregarded claimants' statements or failed

1/The question of whether this definition of "de novo" violates a claimant's rights to due process is presently before the New Hampshire Supreme Court.

to fully explore issues. In eight instances, the Appeal Tribunal disregarded statements of claimants that indicated they met eligibility requirements.

Claimants' statements disregarded

For example, a claimant who was employed as a teacher in a day care center left work on Friday, December 21, 1979. The center was closed for the Christmas holidays. The claimant was on paid vacation from December 22, 1979, through January 1, 1980. When she returned to work on January 2, her employer told her she was temporarily laid off because of a lack of work. On January 7 the claimant filed a claim for unemployment benefits for the week ending January 5 (meeting the requirements for filing a claim within 3 business days of being unemployed). On the form returned to DES, the claimant's employer stated the claimant had been laid off because of lack of work but did not indicate the date. There was no evidence in the files that DES had any further contact with the employer. The certifying officer denied benefits on the basis that the claim was not filed timely. The decision stated that the claimant was laid off on December 21, 1979, and a timely claim for the week ending January 5, 1980, should have been filed by December 31.

The claimant appealed the decision and submitted a letter which stated she was not laid off on December 21, 1979, but was on vacation. The claimant further stated she was paid for this vacation (the week ending December 29) as well as receiving holiday pay for December 31 and January 1. She added that she was not laid off until January 2, when her employer informed her she would not be needed for a temporary period. At the appeal hearing, the claimant repeated the above information and stated that she had met the filing requirements of the law. The Appeal Tribunal disregarded the claimant's statements and denied benefits because the claimant had not filed a claim by December 31. We discussed this case with the Tribunal Chairman, who agreed with our analysis and stated he had made a mistake.

In another case, a claimant left her job as an inspector in a shoe factory because of changes in her working conditions which adversely affected her health. Specifically, the claimant stated her work station was moved from a well-lighted area near a window to a poorly lighted area where a fan used to dry shoe glue circulated air directly on her back. The claimant stated that this aggravated an arthritic condition, and because her employer would not correct the situation, she left. The decision denying benefits stated that the claimant left her job because of working conditions and that her employer reported she had left to begin a new job. The decision stated that the separation was voluntary and without good cause attributable to the employer.

The claimant appealed the decision and was represented at the appeal hearing by a paralegal professional from the New Hampshire Legal Assistance Corporation. At the hearing, the claimant stated she did not leave her job to start a new one, but because the changed working conditions affected her health. She said she had asked her supervisor several times to provide a light and move the fan to a position where the air flow would still dry the glue but not affect her. According to the claimant, the supervisor refused. The claimant also stated the company had placed a coat rack where her previous work station was. The Appeal Tribunal denied benefits, concluding that the claimant had voluntarily left her employment and the reason for leaving was not attributable to the employer.

We discussed this case with the Tribunal Chairman and the DES Deputy Commissioner. The Chairman told us that, in his opinion, the change was merely a change in work location and not working conditions. The Deputy Commissioner said he would have granted a reopening on the basis of mistake.

In five instances, we noted that the Appeal Tribunal did not fully explore matters raised at the hearing that might have shown the claimant to be eligible for benefits.

For example, a claimant left her job because (1) her employer failed to keep two promises made to her (a position upgrade and supervisory training) and (2) personal conflicts within her department caused her health to suffer. The certifying officer concluded the claimant had voluntarily left her job without good cause attributable to the employer, and benefits were denied. At the hearing the employer was represented by the employee relations manager and an unemployment compensation consultant. During the hearing the claimant did not dispute the fact she had quit her job but stated that the primary reason for her quitting was because the department manager was harrasing her. She stated that the department manager had a "drinking problem" and would return from lunch intoxicated and harrass her. The employer's representative asked the claimant what she had done about the problem. The claimant stated she had spoken to her immediate supervisor and was informed that the Personnel Department had already been advised of the problem. The employer's representative did not rebut the claimant's allegations about the manager's drinking problem. The Appeal Tribunal did not pursue the harrassment issue, which if fully explored, may have shown that the claimant had quit for reasons attributable to the employer.

We discussed this case with the Tribunal Chairman and the DES Deputy Commissioner. The Chairman told us he did not believe the claimant was harrassed. The Deputy Commissioner agreed with our analysis and said he would have granted a reopening on the basis of newly discovered evidence.

Appeal Tribunal does not
review records of withdrawn
or dismissed appeals

An individual may withdraw an appeal request any time before a scheduled hearing. If an individual does not appear for a scheduled hearing, the appeal is dismissed. In such cases, the Appeal Tribunal does not review the records but automatically dismisses the appeal or grants a withdrawal. According to DES officials, individuals who do not appear for a hearing or withdraw an appeal waive their right to a case review and the denial is finalized. Department of Labor guidelines, however, state that:

"A request for withdrawal should not be granted automatically for several reasons: withdrawal may be contrary to the best interests of the party requesting it; or the request may be based upon misunderstanding or misinformation; or granting the request may give finality to a clearly erroneous benefit determination.

"An interested party's request to withdraw his appeal should be granted whenever the appeal tribunal is satisfied that:

"(a) the party understands the effect which a withdrawal of the appeal would have; (b) the request is not the result of any coercion, collusion, illegal waiver of benefit rights or of other violations of law, and (c) the benefit determination is not clearly erroneous."

Concerning dismissals, the guidelines state that:

"Appeals should not be dismissed automatically because one or both of the parties fail to appear at the hearing. The appeal tribunal should award or deny benefits only if the ascertainable facts justify it."

The guidelines further state that:

"If neither party appears at the hearing, and the record consists solely of the administrative file, the appeal notice, and the notice of hearing, the appeal tribunal should review the record for any patent error in the determination from which the appeal was taken. If an error is discovered the appeal tribunal should render a decision or remand the case to the agency for administrative correction. If no error is apparent in

the record, the appeal tribunal should issue a notice of dismissal of the appeal which contains a notice of right to reopen."

Our review of a sample of 21 withdrawn or dismissed appeals showed that in 5 cases (24 percent) the original decision contained errors. For example, a claimant was denied benefits on the basis that he had been fired for misconduct. The claimant's employer stated that the claimant was terminated on May 22, 1980, because he did not come to work on May 19, 20, and 21 and did not call in. The claimant, however, stated that he did not fail to report but had been fired on May 16 because he asked for a pay raise. Neither the claimant nor the employer appeared at the hearing, and the appeal was dismissed.

Although there was an obvious dispute over the reason the claimant was unemployed, local office personnel accepted the employer's version of the facts without obtaining any corroboration. This is contrary to DES policy, which places the burden of proof on the party making the disqualifying statements. A review of the case records might have disclosed this error.

Selection criteria and training of appeal personnel

Appeal Tribunal Chairmen are full-time DES employees and as such are covered by the State's civil service laws. The DES Personnel Department maintains job descriptions covering the duties, responsibilities, and minimum qualifications required for the Chairmen. Vacancies are filled from within DES primarily because the job requirements include several years of supervisory experience in unemployment compensation administration.

DES does not have any written selection criteria for the part-time Appeal Tribunal members. These individuals are appointed by the DES Commissioner and serve at his pleasure. According to the Commissioner, when a need arises for additional labor and/or management representatives, he asks labor organizations or management groups to furnish names of individuals interested in serving and makes a selection.

Neither the DES employees nor the appointed appeal members have received much training to help them carry out their responsibilities. Newly designated Tribunal Chairmen attend a 1-week training course at the National Judiciary College in Reno, Nevada. According to DES officials, however, some of this training is more appropriate for newly appointed judges than for members of unemployment compensation Appeal Tribunals. The DES Deputy Commissioner told us that, although much of this training course may not be relevant to Tribunal members, it is the only training available.

The appointed Tribunal members receive only on-the-job training, which is provided by the Tribunal Chairmen. According to DES officials, this training consists of attending hearings as observers before an appointed member serves as part of a Tribunal.

Officials at Labor's regional office, however, told us that Labor's national office has offered several training courses in appeal hearings which DES has not taken advantage of. For example, between 1974 and 1979 Labor's national office offered 14 training sessions in appeal hearings and decision writing principles and techniques for hearing officers.

A typical training course covered the following:

- First day - Fair Hearing Principles
 - De Novo Hearing Concept
 - Due Process of Law
 - Decision Writing Techniques
 - Purpose of Decision, Contents, and Style
- Second day - Burden of Proof, Order of Proof; Questioning Techniques
 - Evidence--Admissibility; Quality of Evidence for Factfinding
 - Preparing Findings of Fact on Basis of Review of Evidence
 - Evidence--Hearings Principles; Hearsay
 - Business Record Exception; Opinion Evidence
 - Expert Witness; Judicial or Official Notice
- Third day - Decision Writing--Reasoning
 - Legislation, Conformity, and Compliance
 - Admissions, Self-incrimination
 - Use of Interpreters
 - Decision Writing--Conclusions and Decisions
- Fourth day - Evidence and Hearing Principles; Exhibits; Objections; Leading Questions; Off-the-Record Decisions; Stipulations; Closing the Hearing

Representatives from the other States in Region I attended 8 of the 14 training sessions, but DES staff did not attend any.

In addition to the above training, during 1980 the national office held three seminars for boards of review and their executive staff as well as several 1- or 2-day training meetings for appeal staff from States that requested such training. These sessions usually covered specific appeal topics, as opposed to general training on hearings and decision writing principles and techniques.

Appeal Tribunal does not
receive or provide feedback

As mentioned, New Hampshire has only one administrative appeal level. Individuals not satisfied with a decision of the Appeal Tribunal must pursue the case in the Superior Court. However, cases in which the Superior Court reverses the Appeal Tribunal decision and orders that benefits be paid are merely sent to the cognizant local office for payment purposes. DES does not have a system for providing feedback to the Appeal Tribunal on decisions that the court reverses. According to DES officials, Superior Court decisions are based upon the facts of a particular case, and since the facts in each case differ, Superior Court decisions do not establish precedent.

Also, under current DES procedures, there is no system for disseminating the results of appeals to local offices. As stated earlier, the Appeal Tribunal does not give certifying officers any feedback on appeal results or reasons why a decision was reversed. When a certifying officer decision is reversed as a result of an appeal hearing, the case is forwarded to the cognizant local office for payment purposes only.

Conclusions

The appeal process in New Hampshire has denied benefits to many eligible claimants. The Appeal Tribunal, whose primary function is to give claimants a fair and impartial hearing, has, in some cases, disregarded statements of claimants and, in other cases, failed to fully explore issues which could have been favorable to claimants. In our opinion, the lack of proper training has contributed to this poor performance. Because DES has not taken advantage of training offered by Labor, Tribunal Chairmen have received little training in the principles and techniques of appeal hearings and decision writing. Moreover, the appointed Tribunal members have received even less training since they receive only on-the-job training provided by the Chairmen. We believe additional training is needed for Appeal Tribunal Chairmen and members.

Furthermore, a system for providing Appeal Tribunals with court rulings, coupled with a system for providing feedback to certifying officers on both court rulings and Appeal Tribunal decisions, could enhance the performance of both the Appeal Tribunals and the certifying officers. DES, however, has taken the position that, because Superior Court rulings apply only to the specific case in question and do not establish precedent for other cases, these rulings are not routinely communicated to either the Appeal Tribunal members or the local certifying officers. While we recognize that the court's decisions are based on the facts

of a particular case, they could be valuable as a guide for interpreting and applying the law in similar cases, especially since Tribunal members are generally not lawyers.

Finally, as mentioned, informing the certifying officers of the reasons for appeal reversals could help them improve their performance by pointing out, for example, instances where the law had been misapplied or the initial factfinding was deficient.

Recommendations

We recommend that the Secretary of Labor work with the New Hampshire Department of Employment Security to

- provide training to Appeal Tribunal members, either internally or through Labor training courses; and
- establish a system for providing feedback to Appeal Tribunal members and local office personnel on rulings of the New Hampshire courts.

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