

BTQ QUESTIONS - WRITTEN DETERMINATIONS

QUESTION: How can element 24 – Written Determination be scored “W” (Completely Wrong) in relation to “(a), the determination clearly conflicts with state law and policy” but Element 23 – Law and Policy, could be scored as only “Q” (Questionable)?

ANSWER: Under Element 23 a reviewer would enter “Q” if “some of the relevant and critical facts were not obtained. In the absence of those facts, correct (or incorrect) application of law and policy cannot be established.” Application of law refers to whether, for example, a discharge was or was not for misconduct or whether a voluntary quit was or was not for good cause. In the absence of sufficient relevant and critical facts in the claimant information, employer information or information from others, a reviewer would be unable to determine whether law and policy was correctly applied. Therefore, “Q” scoring is justified based on the absence of relevant and critical facts.

However, if Element 23 is scored as “Q”, Element 24 could be considered “W,” under (a), when there is a clear conflict with the outcome of the determination. For example, a state agency has a statutory provision which indicated that voluntary quit to attend school results in a 15x disqualification from the effective date of the claim. The state evaluates a voluntary quit nonmonetary determination and indicates an outcome that allows benefits beginning with the effective date of the claim. The outcome of the written determination is in clear conflict with the state’s statutory provision therefore, Element 24 would be considered “W.”

REFERENCE SOURCE: ET HANDBOOK No. 301, pp. IV-2, V-8; ET HANDBOOK 401, p. V- 3 through 6.

QUESTION: If a state law requires that a written determination be issued in another language such as Spanish, and the written determination is issued in English how would the case be scored under BTQ?

ANSWER: The elements of the Federal BTQ nonmonetary determination review are designed to assure that written determinations include (1) a summary of facts, (2) the reason for allowing or denying payment; and (3) the conclusion of the decision; however, the BTQ review elements do not extend to state specific language requirements. Therefore, language requirements other than English are not a consideration for scoring down cases.

REFERENCE SOURCE: ET HANDBOOK No. 301, p. V-16 through 19

QUESTION: Is it necessary for the written determination to differentiate between the terms appeal, protest, redetermination, or reconsideration?

ANSWER: No. Various terms are used under state law. What is important is that the written determination contains all of the information required by HB 301.

REFERENCE SOURCE: ET HANDBOOK No. 301, p. V-16, App. B-7

QUESTION: If state law indicates that an appeal must be filed, for example, within 10 days of mailing date or within 7 days of delivery or receipt date, should the written determination include both appeal filing periods? How would a state meet the HB 301 requirements under (b) on page V-16?

ANSWER: The phrase, “within 7 days of delivery date” is a product of a period when UI operations included in-person fact-finding investigations, adjudications, and delivery of written determinations. Many states have restructured their UI divisions and their business model no longer includes an option for in-person business transactions. Therefore, if all determination notices are mailed, the requirement can be met if the notice of determination specifies the period of filing a protest/appeal in relation to the date of mailing.

REFERENCE SOURCE: ET HANDBOOK No. 301, p. V-16, App. B-7

QUESTION: Pages V-16 through V-17, of HB 301 discuss the appeals information that must be included in the written determination and the appeals information that must be included in the written determination and the appeals information that must be included either in the written determination or separate informational materials. Can separate informational materials include the state agency’s website where appeals information is cited?

ANSWER: Yes. Most state agencies have introduced websites that contain various UI subject matter including instructions on filing an appeal. A state agency’s website could be considered separate informational materials, and as with other vital appeal rights resources, the location of the information should be referenced in the written determination.

REFERENCE SOURCE: ET HANDBOOK No. 301, p. V-16 though 17, App. B-7

QUESTION: When both the employer and the claimant are interested parties, and the appeal rights in a determination refer to a handbook that explains, for example, the extension of the filing period for good cause or the method of getting filing assistance, but the state's procedure does not include sending a copy of the handbook to the employer, would the written determination be downgraded?

ANSWER: Generally, yes; all interested parties should be notified of their appeal rights, which must be included in the written determination, and additional appeals information must be provided in either the written determination, or separate informational materials. Page V-16, of HB 301 states, "State law and policy define interested parties who must be issued a written determination....the same appeals information must be provided to an employer who is deemed an interested party to the determination."

REFERENCE SOURCE: ET HANDBOOK No. 301, p. V-16 through 17, App. B-7

QUESTION: If a state law or policy allows for consideration of untimely appeals, should that information be explained in the written determination?

ANSWER: Yes, either the written determination or separate informational materials must inform interested parties if state law provides for extenuating circumstances when a late protest is filed by an interest party.

REFERENCE SOURCE: ET HANDBOOK No. 301, p. V-16 through 17, App. B-7
