



Employer's Guide: A Deep Dive Analysis on Unemployment Hearing Cases

Dive into 12 unemployment hearings where we examine evidence from both the claimant and the employer. Giving you unmatched insight on the decisions handed down from the Administrative Law Judge and The Board of Review. You'll learn key takeaways for how states review separations and the type of evidence that might be needed.



Meet the Analyst



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Peg oversees the Equifax Unemployment Hearing Consultants. She has more than 15 years of experience in the unemployment industry, with particular focus in unemployment appeals. Her experience includes account management, hearing representation, and Board of Review appeals. She holds BSBA and JD degrees from Creighton University.

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Please remember: Unemployment Laws vary from state to state. The result in these cases might be different from a case in your state based on your separate or unique facts, laws, regulations, or circumstances.

Post-Accident Drug Test Briefly: An Unemployment Case Analysis



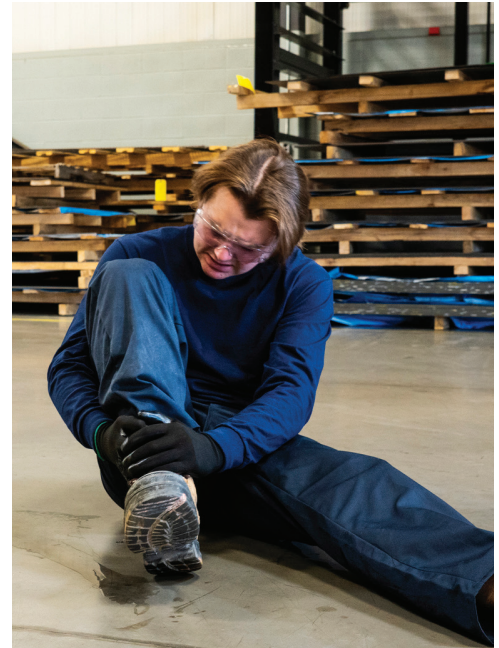
Background

The claimant was discharged after failing a post-accident drug test. She was allowed benefits upon a finding that she was discharged, but not for misconduct connected with the work. The employer appealed, and a hearing was scheduled before an administrative law judge.

At the Hearing

The Employer's Evidence: The employer testified that the claimant had fallen on the job. The next day, she went to the hospital to be treated. Four days after the claimant's fall, the employer took her to a facility to perform a drug test. The employer's policy (which the claimant received at hire) provided that in the event of an accident on the job, employees will be drug tested, and faced disciplinary action up to termination in the event of a positive result. The claimant's specimen returned as positive for amphetamines, and the claimant was discharged. The employer's policy, the claimant's acknowledgment of policy, the MRO report, and the final results including test levels were presented as evidence to comply with state rules.

The Claimant's Evidence: The claimant testified that she had fallen in front of the employer's facility as she was attempting to avoid a collision with a customer. The next day, she realized she needed medical attention and went to the hospital. Four days after her fall, the employer picked her up at home and drove her to the testing facility. The claimant testified that she told the testing facility that she had been prescribed oxycodone for pain related to the fall, and was taking Sudafed for a sinus infection. Despite that information, the drug test came back as positive and the claimant was discharged.



The Hearing Decision

The Administrative Law Judge found that the claimant was discharged for misconduct connected with the work and the claimant was disqualified from benefits. The employer proved, by submitting all documentation required by state rules, that the claimant had tested positive for amphetamines in violation of the employer's drug policy. The claimant disagreed and appealed, arguing that her actions were not misconduct because she had been taking Sudafed, which she argued could come back as positive for amphetamines, therefore the employer failed to prove she violated the employer's policy.

The Board of Review Decision

The Board of Review reversed the Administrative Law Judge's decision and the claimant was allowed benefits. The employer presented a drug testing policy providing for post-accident drug testing. However, the employer failed to test the claimant immediately and waited four days to do so. The employer was therefore unable to prove that the accident was caused by drug use, and was therefore unable to prove that the claimant's discharge was for misconduct connected with the work.



Takeaways

1) Positive post-accident drug tests can result in a finding of misconduct if all required elements are proven. Drug testing cases can be very difficult to prepare for and win due to wide and varied state rules regarding what evidence needs to be presented to prove misconduct.* In this state, the employer was required to submit specific documentation to prove its case. Workforce Solutions Unemployment Consultants and Hearing Representatives are well-versed in state rules regarding these separations and are invaluable resources when preparing for and participating in these hearings. Please contact your unemployment consultants with questions about your state.

2) A delay between an accident and a required post-accident drug test can result in an award of benefits to a claimant. Post-accident drug testing is generally done to determine if a work-related accident was or could have been caused by intoxication on the job. Not performing a post-accident test immediately could prevent a finding of misconduct. Some substances can appear in test results long after the drug was ingested. It would be extremely difficult to prove that any substances for which the employee's test returned as positive were taken prior to the accident and could have caused the accident itself. If the employer is unable to prove the accident was caused by prohibited drug use, the state could allow benefits.

A delay between an accident and a required post-accident drug test can result in an award of benefits to a claimant.



Time Clock Fraud Briefly: An Unemployment Case Analysis



Background

The claimant was discharged for excessive breaks and time clock fraud. She was allowed benefits upon a finding that she was discharged, but not for misconduct connected with the work. The employer appealed, and a hearing was scheduled before an administrative law judge.

At the Hearing

The Employer's Evidence: The employer testified that the claimant, who worked as a night shift manufacturing operator, was discharged for taking excessive breaks and not clocking out while she was away from her work. The employer had discovered that a significant number of employees were following a pattern of taking excessive breaks. In response, the employer met with all of the workers, informing them that their actions would no longer be tolerated and they must adhere to a strict number of minutes per shift. The employer discovered that despite the meeting, the claimant continued to take excessive breaks ranging from 15 to 30 minutes past her allotted time. The employer presented time punch documentation and Human Resources testimony regarding seeing the claimant on security cameras as evidence that the claimant was away from work for the excessive time.



The Claimant's Evidence: The claimant testified that she attended the meeting and was aware of the company's stated policy regarding excessive break time. She testified that she'd approached her supervisor and asked if the night shift would also be required to follow the strict break times. The claimant testified that her supervisor responded that as long as the work was completed, the night shift would not be expected to adhere to the policy. The claimant added that the shift was meeting goals, and she'd seen other employees taking the same amount of time for break also, and believed that it meant that the supervisor's statement was correct.

The Hearing Decision

The Administrative Law Judge found that the claimant was discharged, but not for misconduct connected with the work, and she was allowed benefits. The ALJ found that the claimant reasonably believed that her actions were allowed, and the employer's evidence showed she was only taking 5 to 10 extra minutes per shift rather than the 15 to 30 as testified to by the employer. The employer disagreed and appealed, arguing that the claimant stole company time by taking excessive breaks without clocking out for the time and that her actions were a deliberate disregard of the employer's interests.

The Board of Review Decision

The Board of Review agreed with the Administrative Law Judge's decision and the decision remained in effect. The employer was able to prove that the claimant took some extra time on her breaks, but the employer was unable to prove that the claimant did so willfully because the claimant reasonably believed that her supervisor condoned her actions.



Takeaways

1) An element of intent must generally be present for a finding of misconduct. Misconduct can be defined as a deliberate disregard of the employer's interests or of the duties and obligations owed to the employer. In this case, the element of "deliberate" was not proved because the claimant was able to convince the ALJ that she was unaware that she was required to follow the policy. As she was unaware that her adherence to strict break times was in her employer's interests, she was unable to deliberately disregard those interests.

2) It is recommended that a claimant's direct manager appear to testify in unemployment hearings. In this case, the claimant's direct supervisor did not appear to testify during the hearing. The employer's evidence was presented by a Human Resources representative who was familiar with the investigation into the claimant's break times. In this case, if the claimant's manager had appeared to offer his first-hand testimony, he could have denied or explained any statements attributed to him by the claimant. If the manager had denied giving the claimant permission to exceed her allotted break time, the outcome might have been different. It is rare that a direct supervisor has no relevant information to offer regarding a claimant's separation.

It is recommended that a claimant's direct manager appear to testify in unemployment hearings.



Violating Company Policy Briefly: An Unemployment Case Analysis



Background

The claimant was discharged for repeated violations of company policy. She was allowed benefits upon a finding that she was discharged, but not for misconduct connected with the work. The employer appealed, and a hearing was scheduled before an administrative law judge.

At the Hearing

The Employer's Evidence: The employer testified that the claimant, a retail manager, had received several warnings throughout her employment for various violations of company policy and performance concerns. The claimant had received the employer's policies at the beginning of and throughout her employment, and as a manager, was charged with their enforcement. During her final warning for failing to follow security policy, the claimant was told that any further violations of company policy could result in her discharge. On the date of the final incident, the claimant gave a significant employee discount to a former employee who had not worked for the employer for two months. The claimant was aware of the former employee's resignation because she'd read the employee's resignation letter.



The Claimant's Evidence: The claimant testified that she had received and understood the employer's policies. She acknowledged receiving the warnings as testified to by the employer. She testified that on the date of the final incident, she gave the former employee the employee discount because she believed the employee still worked for the company, despite the fact that the claimant had read the former employee's resignation letter. The former employee had an employee card which was still active in the system and which allowed the discount to be applied to the transaction.

The Hearing Decision

The Administrative Law Judge found that the claimant was discharged for misconduct connected with the work, and she was disqualified from benefits. The ALJ found that the claimant had violated the employer's employee discount policy, and that the claimant's final warning had placed her on notice that the incident could lead to her discharge. The claimant disagreed and appealed, arguing that she reasonably believed that the former employee was still employed because the discount card was still active. The claimant argued that her manager should have ensured that the card was deactivated and could no longer be used, which would have prevented the final incident.



The Board of Review Decision

The Board of Review agreed with the Administrative Law Judge's decision and the decision remained in effect. The employer had proven that the claimant had repeatedly violated company policy and had received a final warning. That warning should have placed the claimant on notice that she should have been more careful on the date of the final incident, particularly because the claimant had read the resignation letter. Additionally, as a manager, one of the claimant's responsibilities was removing the discount card from the system.

Takeaways

1) It is not always necessary for a claimant to have been warned regarding a specific violation to be disqualified from benefits. In this case, the claimant had received several warnings throughout her employment, but not for violating the employer's discount policy. This claimant had received a final warning in which she was informed that any further violations of company policy could result in her discharge. Even though the incidents were not similar, the claimant had been placed on specific notice that *any* other violation of company policy could result in her discharge.

2) Managers are generally held to a higher standard with regard to violations of policy. In this case, the claimant's argument was that the final incident was not her fault because her manager had failed to deactivate the former employee's discount card. The employer successfully argued in this case that as a manager, the claimant also had the responsibility to deactivate the card, so she could not shift blame for the incident to her manager. The claimant had read the resignation letter and the former employee had not appeared to work in two months. As a manager, the claimant had a duty to do at least some investigation before giving the discount, and at least ask the former employee if she was still working. The state agreed with the employer. Her failure to ensure that the policy was followed rose to the level of misconduct connected with the work.

Managers are generally held to a higher standard with regard to violations of policy.



Assumed Quit Briefly: An Unemployment Case Analysis



Background

The claimant left voluntarily when she believed she had been discharged. She was allowed benefits upon a finding that she was separated for no disqualifying reason. The employer appealed, and a hearing was scheduled before an administrative law judge.

At the Hearing

The Employer's Evidence: The employer testified that the claimant, a retail shift leader, had stopped reporting for work. The claimant's boyfriend had been banned from the store; however the night before the claimant's last day of work, the boyfriend came to the store. The claimant asked him to leave. The next day, the claimant told her manager she wanted to quit due to work stress. He convinced her to stay and take a different position. The claimant's manager heard later that day that the claimant's boyfriend had been on the premises. He tried to call her to discuss it, but had to leave a voice message. A peer of the claimant also sent her a Facebook message and asked her not to come to work, but to call instead. The claimant responded to the Facebook message that her keys and uniform were in her locker. The employer heard nothing else from the claimant, and she never reported back to work. The employer assumed she had quit.



The Claimant's Evidence: The claimant testified that she forgot to tell her manager that her boyfriend had come to the store. When she saw the Facebook message that she was to call the store instead of report for her shift, she figured she had been fired. The claimant responded that her keys and uniform were in her locker because she knew that if she had been discharged she would have been required to return both items. She testified that she did not intend the message to be her resignation.

The Hearing Decision

The Administrative Law Judge (ALJ) found that the claimant quit voluntarily without good cause connected with the work, and she was disqualified from benefits. The ALJ found that the claimant had voluntarily quit due to personal reasons because she unreasonably believed she'd been discharged. Her belief was unreasonable because no member of management had told her she'd been fired. The claimant put forward no reason for leaving which would be good cause connected with the work. The claimant disagreed and appealed, arguing that she reasonably believed that she had been fired when she was told not to go to work but to call instead.



The Board of Review Decision

The Board of Review (The Board) agreed with the ALJ's decision and the decision remained in effect. The Board found that the ALJ's decision that the claimant had left voluntarily was reasonably based on the record of evidence. The Board had no reason to overturn the ALJ's findings of fact or conclusions of law.

Takeaways

1) The first finding that must be made in a hearing on the claimant's separation from employment is the nature of the separation.

In most cases, this is not in dispute. In this case, the employer believed the claimant had resigned, and the claimant believed she had been fired. The ALJ was charged with determining which was correct before deciding whether the separation was disqualifying. In similar cases, be prepared to present evidence regarding any decisions that had been made about the claimant's employment, and evidence regarding your belief that she had quit voluntarily. A key witness would be the claimant's manager in case the claimant changes her story at hearing.

2) The claimant's belief that she had been discharged must have been reasonable.

In this case, the claimant's belief was based on an unreturned voice message from her manager and a Facebook message from a peer asking her not to go into work. A discharge from employment is a significant event. Claimants in similar situations must generally have made an effort to reach someone in their management chain or Human Resources to determine whether a discharge has actually occurred. A claimant who does not, and who acts on assumptions that are based on statements made by people outside of her management chain, is generally going to be disqualified from benefits.

The first finding that must be made in a hearing on the claimant's separation from employment is the nature of the separation.



Retracted Resignation Briefly: An Unemployment Case Analysis

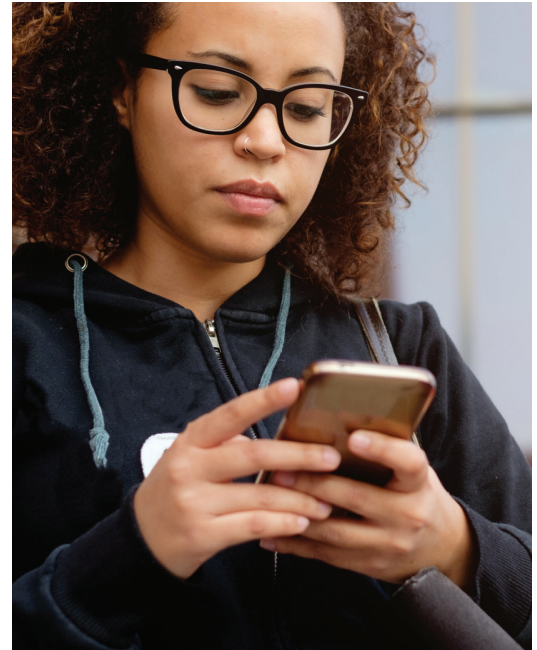


Background

The claimant left voluntarily for personal reasons after attempting to rescind her resignation. She was disqualified from benefits upon a finding that she quit without good cause. The claimant appealed, and a hearing was scheduled before an administrative law judge.

At the Hearing

The Employer's Evidence: The employer's witness testified that just prior to the scheduled end of a leave of absence, the claimant called the employer's witness and indicated she was resigning for personal reasons and would not be returning to work. One week later, the claimant called the witness and attempted to rescind her resignation because she needed the work. The witness informed the claimant that her position had already been filled, but they would be able to place her in another, similar position. A few days later, the claimant sent a note from her doctor placing her off work for another week. Near the new return date, the employer's witness attempted to reach the claimant but was unsuccessful. The claimant never returned to work. The employer's witness offered an exhibit consisting of notes that she had taken during her phone conversations with the claimant. The notes were consistent with her testimony.



The Claimant's Evidence: The claimant testified that she had to extend a medical leave of absence. The claimant denied offering her resignation, denied attempting to rescind her resignation, and testified that she was fired because she failed to return from her leave of absence on the original return date.

The Hearing Decision

The Administrative Law Judge (ALJ) found that the claimant quit voluntarily without good cause connected with the work, and she was disqualified from benefits. The ALJ found the employer's testimony to be more credible than the claimant's, particularly because the employer's evidence was clear, consistent, and supported by the witness' contemporaneous notes. Because the claimant offered no testimony regarding her reason for leaving work, the claimant's resignation was without good cause connected with the work. The claimant disagreed and appealed, arguing that she was discharged.

The Board of Review Decision

The Board of Review (The Board) agreed with the ALJ's decision and the claimant remained disqualified from benefits. The Board found that the ALJ's decision was reasonably based on the record of evidence. The Board deferred to the ALJ's findings of fact and credibility determinations and found no reason to overturn them.



Takeaways

1) The first finding that must be made in a hearing on the claimant's separation from employment is the nature of the separation. In this case, the employer testified to conversations with the claimant regarding the claimant's resignation and her attempt to rescind it. The claimant testified that she had been fired. The ALJ was charged with determining which was correct before deciding whether the separation was disqualifying. In this case, the employer's testimony regarding her conversations with the claimant was supported by notes she had made at the time of the conversations. Her testimony was found to be more credible than the claimant's. In similar situations, supporting documentation can be crucial.

2) To be allowed benefits in a voluntary quit case, a claimant must offer a reason for leaving which the state considers to be good cause under state law. In this case, the claimant offered no testimony regarding her resignation. The employer testified that the claimant gave personal reasons for leaving when originally offering her resignation. After the finding that the claimant left work voluntarily, the next finding was whether the claimant's reason for leaving work could be considered to be good cause under state law. The claimant had the burden to prove she quit for good cause. Because the claimant offered no evidence regarding her reason for quitting work, the ALJ had no evidence upon which to base a finding that she had quit for good cause. The claimant was unable to prove that she had resigned for a reason which would allow benefits, so she was disqualified.

To be allowed benefits in a voluntary quit case, a claimant must offer a reason for leaving which the state considers to be good cause under state law.



Profanity at Work Briefly: An Unemployment Case Analysis



Background

The claimant was discharged for using profane language at work. He was disqualified from benefits upon a finding that he was discharged for misconduct connected with the work. The claimant appealed, and a hearing was scheduled before an administrative law judge.

At the Hearing

The Employer's Evidence: The witness for the employer, a retail store, testified that the employer maintains a policy the claimant received at hire prohibiting the use of profanity in the workplace. The claimant had received a warning regarding his use of offensive language directed toward a coworker, and was informed that further violations of the policy could result in his discharge. On the date of the final incident, the claimant was angry, complaining about a new timekeeping system to a coworker. He called her "a ... liar" and used significantly profane language. The coworker and a witness to the conversation complained to management, and the claimant was discharged.

The Claimant's Evidence: The claimant testified that he used profanity in the workplace, but he was not fully aware that it could lead to his discharge. He testified that, despite the warning issued to him, he believed that the policy was not uniformly enforced – he believed this because his supervisor used profanity towards him frequently, and it did not appear that she was disciplined. The claimant also overheard others using profanity in the break room without consequence. The claimant testified that he did not file a complaint against his supervisor because he believed he would be retaliated against.

The Hearing Decision

The Administrative Law Judge (ALJ) found that the claimant was discharged for misconduct connected with the work, and he was disqualified from benefits. The ALJ found that the employer proved misconduct because they provided evidence regarding the final incident, and proved that the claimant was aware that his language could result in his discharge. The claimant disagreed and appealed, arguing that he was not aware that the final incident could result in his discharge, and therefore his discharge was not for misconduct connected with the work.

The Board of Review Decision

The Board of Review (The Board) agreed with the ALJ's decision and the claimant remained disqualified from benefits. The Board found that the ALJ's decision was reasonably based on the record of evidence. The claimant offered no evidence outside of his opinion that the policy was not uniformly enforced. He offered no evidence that the employer failed to act on knowledge of a policy violation.





Takeaways

1) Profanity in the workplace can rise to the level of misconduct connected with the work. In this case, the employer, a retail store, maintained a policy prohibiting profanity. A retail store has a significant interest in not offending its customers. In this case, the employer's evidence and testimony proved the existence of the policy, the reason for the policy, and that the claimant was aware of the policy. As with any policy violation, it is critical to ensure that an employer presents evidence proving the existence of the policy and the claimant's knowledge of it.

2) If an employer does not enforce its policy uniformly, it may be difficult to prove a claimant had knowledge that a violation could result in his discharge. Knowledge that a policy violation could result in discharge is necessary in many of these types of cases. In this case, the claimant testified that he believed that the policy was not uniformly enforced because he heard others use profanity and did not believe that the others were similarly disciplined. In this case, the only evidence the claimant offered to show that other violations were not treated similarly was his own opinion. The claimant did not offer evidence or testimony to support it. If the claimant had been able to prove that the employer condoned others' use of profanity by not administering discipline, the claimant could have persuaded the ALJ that he was not reasonably aware that the final incident could result in his discharge. If you believe a claimant will attempt the same or a similar argument in your case, be prepared to offer evidence and testimony that you uniformly enforce your policies, and when complaints are made, they are investigated and addressed as your policies dictate.

If an employer does not enforce its policy uniformly, it may be difficult to prove a claimant had knowledge that a violation could result in his discharge.



Temporary Position Briefly: An Unemployment Case Analysis



Background

The claimant quit voluntarily after she was informed that her work would end on a future date. She was disqualified from benefits upon a finding that she quit without good cause connected with the work. The claimant appealed, and a hearing was scheduled before an administrative law judge.

At the Hearing

The Employer's Evidence: The claimant, a substitute teacher working at a long-term assignment, testified that she was hired to teach for a semester. Prior to the end of the semester, the employer informed her that she would not be hired into that position permanently. The claimant stopped working immediately.

The Claimant's Evidence: The employer's witness testified that the claimant was a substitute teacher hired for a long-term assignment to teach math. The claimant was informed prior to the end of the semester that she would not be hired permanently into that position. The claimant was told that she could continue teaching her classes until the end of the semester. She was also informed that after the end of the semester, the claimant could continue substitute teaching. The claimant declined to work until the end of the semester, and stopped reporting for work.



The Hearing Decision

The Administrative Law Judge (ALJ) found that the claimant quit voluntarily without good cause connected with the work. The ALJ found that the claimant had continuing work available to her, at least through the end of the semester. Her decision to leave immediately was a voluntary resignation. The claimant offered no evidence to support a finding of good cause to quit, and failed to contact her employer to determine if other long-term options were available, so she was disqualified from benefits. The claimant disagreed and appealed, arguing that she was discharged when she was informed that she was not hired into the permanent position.

The Board of Review Decision

The Board of Review (The Board) agreed with the ALJ's decision and the claimant remained disqualified from benefits. The Board found that the ALJ's decision was reasonably based on the record of evidence. The claimant quit voluntarily with continuing work available, and presented no evidence that she'd quit with good cause connected with the work.



Takeaways

1) In an unemployment hearing scheduled to determine if the claimant should be disqualified based on the nature of the separation, the first finding that must be made is the nature of the separation. Laws in each state provide that if an employee quits or is discharged for a disqualifying reason, the claimant may not collect unemployment benefits, at least for a period of time. There are certain separations that the state could find as quits or discharges based on the facts of the case. Determining factors could be whether continuing work was available, and whether the claimant attempted to continue working.

2) A claimant who is notified of a future layoff could be disqualified if she leaves prior to the scheduled last day of work. The determining factor is usually whether there is work between the date of notification and the date the claimant is given as her last day of work. If a claimant chooses to leave prior to a future date of separation, the case will usually be adjudicated as a voluntary quit and the claimant must prove good cause to leave work in order to be entitled to benefits. In this case, the claimant had work through the end of the semester which she chose to not complete. The employer was able to prove that continuing work was available, and that the claimant elected to stop working immediately instead of teach until the end of the semester. The claimant's decision meant the separation became a quit instead of a lack of work under state law, and the claimant was then required to prove that she failed to continue through the end of the semester for reasons which could be considered good cause. *Please note: some states could look at this separation differently.

A claimant who is notified of a future layoff could be disqualified if she leaves prior to the scheduled last day of work.



Attendance Issues Briefly: An Unemployment Case Analysis



Background

The claimant quit voluntarily after a discussion with her manager regarding her attendance. She was allowed benefits upon a finding that she was discharged, but not for misconduct connected with the work. The employer appealed, and a hearing was scheduled before an administrative law judge.

At the Hearing

The Employer's Evidence: The employer testified that the claimant was having significant attendance issues. The claimant's manager testified that he called her into his office and told her that if she did not improve her attendance from that date forward, she could be subject to disciplinary action, including discharge. The claimant's manager testified that the claimant told him that she knew that she could not improve her attendance due to the demands of her personal life. She offered her resignation, which he accepted.

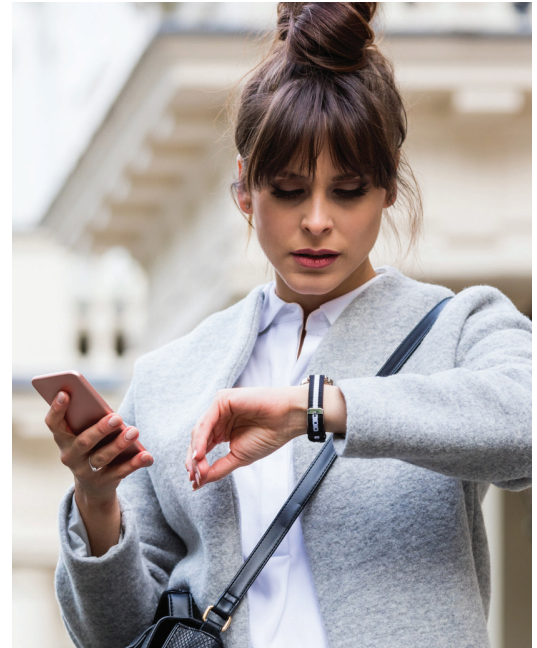
The Claimant's Evidence: The claimant testified that she was effectively discharged during her conversation with her manager. She testified that she knew that termination was certain because personal issues would cause her to have more absences. She testified that she knew that if she was discharged, she would not be considered to be rehirable. She wanted be able to return to the employer if possible. She gave no other reason for offering her resignation.

The Hearing Decision

The Administrative Law Judge (ALJ) found that the claimant quit voluntarily without good cause connected with the work. The ALJ found that the claimant was not discharged because she had continuing work available to her and the opportunity to improve her attendance. There had been no decision to terminate her employment. The claimant offered no evidence to support a finding of good cause to quit, so she was disqualified from benefits. The claimant disagreed and appealed, arguing that she was effectively discharged during the conversation with her manager.

The Board of Review Decision

The Board of Review (The Board) agreed with the ALJ's decision and the claimant remained disqualified from benefits. The Board found that the ALJ's decision was reasonably based on the record of evidence. The claimant quit voluntarily with continuing work available, and presented no evidence that she'd quit with good cause connected with the work.





Takeaways

1) A determining factor in whether a separation is a quit or a discharge for unemployment purposes is whether continuing work was available to the claimant.

In this case, the claimant was informed that she could face termination in the future if she did not improve her attendance. The employer had not decided to discharge her, but made it clear that it was a possibility. The claimant could have reported for work on the date of her next scheduled shift, and other shifts thereafter as long as she was able to report to work and improved her attendance. Choosing not to report for future work is generally considered to be resignation.

2) The fact that a claimant believes discharge to be certain in the future does not generally convert a quit into a discharge for unemployment purposes.

In this case, the claimant believed that she was discharged due to the conversation with her manager. However, the claimant and the manager agreed at the hearing that she had the opportunity to continue to work. In this case, when the claimant filed her unemployment claim, she reported that she had been asked to resign. The state initially found that the claimant had been discharged. At the hearing, the claimant's manager appeared to testify under oath that she was not asked to resign, but instead was warned that her attendance was putting her position in jeopardy. The manager was able to prove that continuing work was available. In similar cases, ensure that the person who had the final conversation(s) with the claimant appear to testify. If the employer had not presented the manager as a witness, and the claimant had testified that her manager had asked her to resign to avoid having a discharge on her employment record, the outcome of this case could have been different.

The fact that a claimant believes discharge to be certain in the future does not generally convert a quit into a discharge for unemployment purposes.



Policy Violation Briefly: An Unemployment Case Analysis



Background

The claimant was discharged for violating an employer policy. The claimant was disqualified from benefits upon a finding that she was discharged for misconduct connected with the work. The claimant appealed. A hearing was scheduled before an administrative law judge.

At the Hearing

The Employer's Evidence: The claimant was discharged for violating an employer policy. The employer required its employees to park in a designated area which was paid for by the employer. Other parking was available for customers and visitors. The claimant parked in a visitors' lot on one occasion and received an email informing her that if she parked in that lot again her car would be towed. On a second occasion, the claimant parked in a visitors' parking garage. An administrative assistant validated her ticket, which meant that the claimant would not be required to pay. The employer discovered the incident and discharged her and the administrative assistant. The employer presented the parking policy requiring employees to park in employee parking only and prohibiting validation for employees. The policy carried an effective date of one month beyond the date of the claimant's discharge.

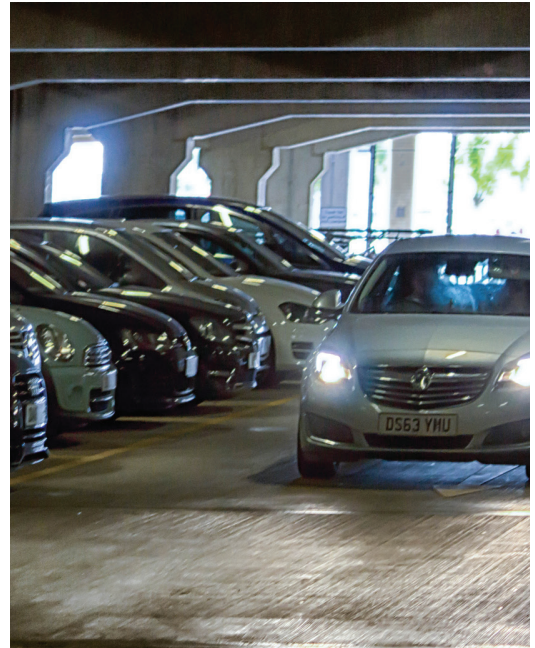
The Claimant's Evidence: The claimant testified that on the date of the final incident, she had forgotten the badge used to enter the employee parking area and used the parking garage instead. She used the garage because she knew that the visitors' lot was off limits after she received the email about parking in the visitors' lot. She testified that she asked to have her parking ticket validated, and the other employee agreed to do it. She testified that a faulty badge had caused her to park in the same garage before, and her ticket was validated with her manager's knowledge, but she was not disciplined for it.

The Hearing Decision

The administrative law judge (ALJ) found that the claimant was discharged for misconduct connected with the work, and she was disqualified from benefits. The administrative law judge found that the claimant's actions were a deliberate violation of a known and reasonable employer policy. The claimant appealed, arguing that she was not aware that her actions could have resulted in her discharge.

The Board of Review Decision

The Board of Review disagreed with the administrative law judge and reversed the decision. The Board found that the employer failed to prove that the claimant was aware that her actions could lead to her discharge. She could not have received the policy which was entered into evidence, and a prior similar incident was allowed without disciplinary action. The claimant could not reasonably have known that her actions could lead to her discharge. The claimant was allowed benefits.





Takeaways

1) If a claimant has violated an employer rule, the employer has the burden of proving that the claimant was reasonably aware of the rule. In this case, the employer presented a written policy which prohibited the claimant's actions. Unfortunately, the employer had updated its policies and provided the updated policy instead of the policy which was in effect at the time of the claimant's violation. The employer proved that a rule existed, but only that it existed after the claimant's discharge. In similar cases, ensure that any written policies presented as evidence were in effect at the time of the claimant's violation. Presenting proof that the claimant received the policy is also critical.

2) A claimant who proves that a rule is not consistently enforced could be allowed benefits. Knowledge that a violation can result in disciplinary action is usually an element that must be proven for a finding of misconduct. A claimant who proves that a prior violation did not result in disciplinary action can successfully argue that she had no knowledge that a subsequent violation could result in disciplinary action. In this case, the claimant proved that her manager was aware of a prior incident she was not disciplined for. In similar cases, be prepared to offer evidence that the claimant was made aware after the first violation that subsequent violations would not be condoned.

If a claimant has violated an employer rule, the employer has the burden of proving that the claimant was reasonably aware of the rule.



Inappropriate Behavior Briefly: An Unemployment Case Analysis



Background

The claimant was discharged for inappropriate behavior. The claimant was allowed benefits upon a finding that he was discharged, but not for misconduct connected with the work. The employer appealed, and a hearing was scheduled before an administrative law judge.

At the Hearing

The Employer's Evidence: The employer's witness testified that he received an anonymous note regarding the claimant's behavior as a supervisor. The note indicated that the claimant had directed profanity and harassing language toward a female supervisor. The witness interviewed the claimant and six of his employees. The witness testified that the claimant's employees who were interviewed had seen and heard about the claimant's inappropriate behavior toward the female supervisor as described in the note. The employees also reported that the claimant had directed profanity and disrespectful language toward his employees. The employer discharged the claimant for violating its zero-tolerance conduct policies, which the claimant had received at hire.

The Claimant's Evidence: The claimant denied the incidents as reported by the employer. The claimant testified that he had never received any warnings regarding his behavior, and had never had any problems working with his fellow supervisor or his employees.

The Hearing Decision

The administrative law judge (ALJ) found that the claimant was discharged for misconduct connected with the work, and he was disqualified from benefits. The ALJ found that despite the fact that the claimant denied the allegations, the employer had presented sufficient evidence to show the claimant had violated the employer's policy. The claimant's actions were so severe that they rose to the level of misconduct connected with the work. The claimant appealed, arguing that he had not behaved in the way the employer had testified to, and that he had never received any warnings regarding inappropriate behavior.

The Board of Review Decision

The Board of Review disagreed with the administrative law judge and reversed the decision. The Board found that the employer failed to prove that the claimant had behaved inappropriately. The employer's testimony consisted entirely of second and third-hand testimony. While hearsay is admissible in administrative hearings, the state could not find the employer's hearsay evidence as more credible than the claimant's credible first-hand denials. The employer failed to prove that the claimant behaved inappropriately, and therefore failed to meet their burden of proving misconduct. The claimant was allowed benefits.





Takeaways

1) While hearsay is admissible in unemployment hearings, it can outweighed by a credible first-hand denial. Hearsay is considered to be more unreliable than first-hand testimony because someone testifying under oath in the hearing can be questioned and his demeanor can be evaluated to determine his credibility. A hearsay witness is presenting information which was received from someone who is not appearing in the hearing to testify. The person who witnessed the events cannot be questioned and his credibility cannot be determined. In this case, the employer's witness was the person who interviewed the employees who had observed the claimant behaving badly. None of the employees who witnessed the claimant's conduct in person appeared to testify, so the claimant's credible denial under oath outweighed the employer's testimony.

2) In a discharge case, the employer bears the burden of proving that the claimant was discharged for a reason which should disqualify him from the receipt of benefits. The ALJ is charged with deciding whether the facts of the case support a disqualification under state law. Once the ALJ determines the facts, she must then apply the law to the facts and issue a decision. In this case, the Board found that the employer's hearsay evidence did not establish that the claimant had violated the employer's policy. Since the employer did not prove that the claimant had violated its policies, the employer was unable to prove that the events that led to the claimant's discharge should disqualify him from the receipt of benefits.

While hearsay is admissible in unemployment hearings, it can be outweighed by a credible first-hand denial.



Attendance Policy Briefly: An Unemployment Case Analysis



Background

The claimant was discharged for excessive absenteeism. She was disqualified from benefits upon a finding that she was discharged for misconduct connected with the work. The claimant appealed, and a hearing was scheduled before an administrative law judge.

At the Hearing

The Employer's Evidence: The employer offered evidence and testimony showing that the claimant, who had received the employer's attendance policy at hire, was discharged for violating it. The claimant's final warning indicated that further unexcused absences could result in the termination of her employment. Two employer witnesses testified that the claimant had been told verbally that, per policy, further absences could only be excused by a doctor's note. (Both witnesses had made notes of that conversation, and provided those notes as evidence during the hearing.) On the date of the final incident, the claimant reported an absence due to illness. One of the employer's witnesses testified that he gave the claimant the opportunity to provide a doctor's note to excuse the absence, but she could not.

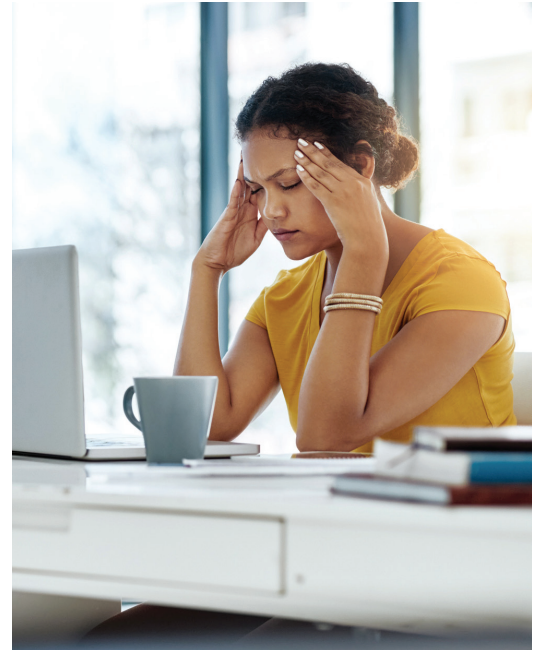
The Claimant's Evidence: The claimant testified that she had received the employer's policy, and had received prior warnings as reported by the employer's witnesses. However, she testified that the conversation about providing doctor's documentation never happened and she was not under any obligation to provide a doctor's note to excuse her final absence.

The Hearing Decision

The administrative law judge (ALJ) found that the claimant was discharged for misconduct connected with the work, and she was disqualified from benefits. The ALJ found that the claimant's record of absenteeism, and the fact that she'd received multiple warnings, were sufficient evidence to prove that she'd violated the policy. Her record of absenteeism rose to the level of misconduct connected with the work and she remained disqualified from the receipt of benefits. The claimant appealed.

The Board of Review Decision

The Board of Review agreed with the administrative law judge and the claimant remained disqualified. The Board found that the employer proved that the employer maintained an absenteeism policy which provided that doctor's documentation could be required for absences, and that the claimant was specifically told that further absences would need to be excused with documentation. The employer also proved that the claimant violated the policy and was warned. She was unable to excuse the final incident; therefore her record of absenteeism rose to the level of misconduct connected with the work.





Takeaways

1) Excessive absenteeism in violation of a known and reasonable company policy can be disqualifying misconduct. In a case involving excessive absenteeism, it is important to be prepared to present evidence about the provisions in your policy, proof the claimant was aware of the policy, proof the claimant violated the policy, and was warned pursuant to the policy. The claimant will be allowed to testify about the reasons for her absenteeism. If the final incident and/or the majority of the incidents were for reasons which were outside of the claimant's control to void, including illness, the claimant could be allowed benefits.

2) If a claimant could have avoided discharge by presenting documentation to prove that an incident was outside of her control, the claimant could be disqualified. In this case, the employer was able to prove, despite the claimant's denial, that she was aware that doctor's documentation would be required to excuse an absence. Both managers involved in the conversation testified about it under oath and provided notes which were written at the time of the conversation. The claimant's denial that the conversation happened was therefore less credible than the employer's testimony. If you have reason to believe a claimant will deny an event, provide all possible proof that the event happened. Any notes which were made at the time of the event can support first-hand testimony. (If one person's notes are presented at hearing by someone else, and the note-writer does not appear to testify, however, they can be considered hearsay and might not outweigh a claimant's denial under oath.)

Excessive absenteeism in violation of a known and reasonable company policy can be disqualifying misconduct.



Written Warnings Briefly: An Unemployment Case Analysis



Background

The claimant was discharged for receiving two written warnings within a year period. He was allowed benefits upon a finding that he was discharged, but not for misconduct connected with the work. The employer appealed, and a hearing was scheduled before an administrative law judge.

At the Hearing

The Employer's Evidence: The employer offered evidence and testimony to show that the claimant, who had received the employer's progressive disciplinary policy at hire, was discharged for violating it. The policy provided that two written warnings with suspensions within a twelve-month period would result in discharge. The claimant had received a written warning and suspension for walking off the job. The final incident that led to the claimant's separation occurred five months later when the claimant left his assigned post at a production machine to go smoke a cigarette. The claimant's failure to work the machine caused it to back up and spill the employer's product on the floor. The claimant received a second written warning and suspension for the incident. After an investigation, the claimant was discharged.

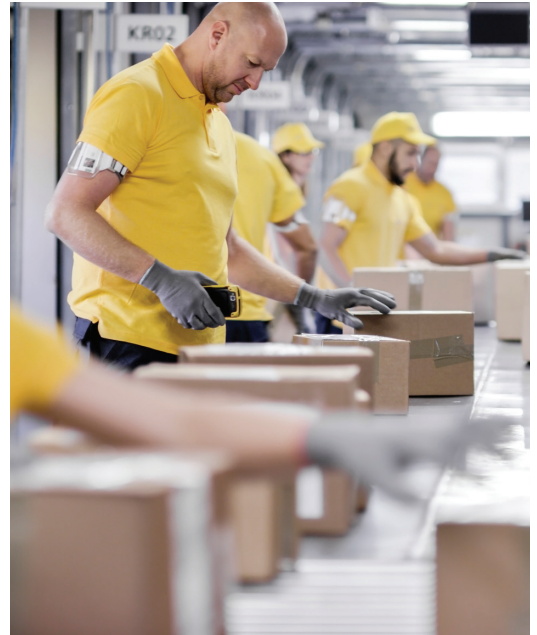
The Claimant's Evidence: The claimant did not appear at the hearing to offer evidence or testimony.

The Hearing Decision

The administrative law judge (ALJ) found that the claimant was discharged for misconduct connected with the work, and he was disqualified from benefits. The ALJ found that the final incident was a deliberate violation of a reasonable employer rule. As the claimant had already received a written warning and a suspension for walking off the job, and was aware that two such warnings could result in his discharge, the final incident was sufficient to rise to the level of misconduct connected with the work. The claimant appealed and requested a new hearing. The claimant failed to appear for the appeal hearing because he "got the date mixed up" and thought the hearing was on a different day.

The Board of Review Decision

The Board of Review agreed with the administrative law judge and the claimant remained disqualified. The Board refused to reopen the matter and schedule a new hearing. The Board found that the claimant's mistake regarding the date of a hearing was simple negligence and was not good cause to reopen the hearing. After reviewing the record of evidence presented at the hearing, the Board found that the ALJ's Decision was fully supported by the facts and the law, and the claimant remained disqualified from benefits.





Takeaways

1) A party must generally prove good cause for failing to appear at a hearing in order for the state to reopen a case. States will generally not easily schedule a new hearing if a party misses an originally scheduled hearing. Good cause to fail to appear can include illness, emergency, and other reasons which would be outside of the party's control to avoid. Mistakes and failure to properly read the hearing notice are usually not considered good cause sufficient for the state to schedule a new hearing. If you are unable to attend a hearing at the time it is scheduled, you may request postponement prior to hearing, giving your reason for your inability to attend. Generally, states expect parties to set aside their daily work and personal schedules to attend.

2) In most cases, the employer must prove that a claimant had been warned for a similar infraction for a finding of misconduct. Unless the final incident is particularly egregious, states generally require that to prove misconduct, the employer must prove that the claimant had a prior warning for a similar incident. This would put the claimant on notice that his behavior is not acceptable and could result in discharge. In this case, the employer proved that the claimant had received a specific progressive disciplinary policy which provided that two policy violations which were serious enough to result in written warnings with suspension could result in the termination of his employment. The claimant was therefore on notice that the final incident could result in discharge.

*This specific set of facts might not result in a finding of misconduct and a disqualification in every state. A state could require a warning for the same behavior, and another might not disqualify because the claimant was issued a warning regarding the final incident and then discharged for the same incident. Please contact your unemployment consultants with questions.

In most cases, the employer must prove that a claimant had been warned for a similar infraction for a finding of misconduct.



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