

2010 Best Practices Tip

Unemployment Compensation Hearings: Guidance for Witnesses, Part 2

The Purpose of Unemployment Hearings

The purpose of the unemployment hearing is to determine a former employee's (claimant's) eligibility for unemployment benefits. The decision of benefit eligibility is made by the state unemployment agency in accordance with specific rules and regulations. The employer is an interested party in the matter, as unemployment benefits are funded by employers, not employees.

The purpose is also to get as many of the facts relative to the individual's employment and why he has separated from employment. It's an opportunity for you to get as many of those facts on record as possible. The unemployment hearing does not interfere with the employer's right to hire and/or fire; its only purpose is to determine eligibility for benefits and if the employer's account should be charged. There is one opportunity to present the case and, typically, the state will not allow the employer to submit any additional information after the hearing has concluded.

"Burden of Proof"

The "burden of proof" generally determines which party will testify first. If the former employee has the "burden of proof," they will present testimony first regarding the "good cause" for their quit. Following their testimony, dependent upon your contracted services, the TALX representative will be given an opportunity to question or cross-examine them regarding their testimony. Witness(es) on behalf of the former employee follow this same procedure. After completion of the claimant's testimony, the administrative law judge will allow the employer to present their testimony. Again, the former employee will be given an opportunity to cross-examine the employer's witness(es).

If the "burden of proof" is on the employer, the same procedure is followed; however, the employer presents their testimony first and the former employee follows.

Occasionally, the issue of whether the claimant quit or was discharged will need to be resolved prior to the referee's pursuit of separation particulars. In these cases, the employer must be prepared to present evidence regarding who, former employee or employer, took the initial step toward separation.

Important Points While Testifying

- Testimony must contain specific details, including names, dates, times, and description of the actual events that occurred.
- When asked a question, listen to it, consider it, and then answer that question only. If you do not understand the question, ask that it be restated or clarified.
- Answer questions that are within your knowledge without hesitation and with conviction. If another employer witness will testify and they have the first-hand information, indicate that in your answer.
- Do not volunteer additional information. Answer the question as concisely as possible.
- If you do not know the answer to a question, say, "I do not know."
- Do not speculate or answer hypothetical questions. Testify to the facts within your own knowledge.
- Provide a direct response to the question asked without adding additional or irrelevant information.
- Ask the TALX representative for a recess if you feel there are additional facts that should be addressed, or if you feel you need time to collect your thoughts.
- During the hearing have all state hearing documents, employer documents that TALX has submitted for the hearing on your behalf, and the employee's employment record accessible to you for quick and easy reference.

2010 Best Practices Tip

Hearings Involving a Voluntary Quit

The "burden of proof" rests with the former employee in cases involving a voluntary quit. The former employee must prove that he/she voluntarily quit with good cause as defined by the applicable state statutes in order to argue entitlement to unemployment benefits such as a substantial change in pay, working conditions, et cetera, made by the employer. Good cause is generally established when work-related conditions have substantially deteriorated or a situation exists that would force a reasonable person to leave his/her employment.

In these cases, the employer should be able to present facts where they have attempted to resolve the situation with the employee, i.e., alternatives that were available to the employee prior to the resignation.



Witnesses should be prepared to provide the initial background information regarding the former employee's employment, establish the reason(s) given for quitting, provide details of the events that caused the former employee to quit and, finally, state what attempts the former employee made to resolve the situation before quitting.

Hearings Involving a Discharge

The "burden of proof" rests with the employer in cases involving a discharge. The employer must prove that the incident(s) which led to the former employee's discharge, amount to misconduct as defined by the applicable state statute. Misconduct can be established by the violation of a reasonable employer rule or expectation. The employer must show that the former employee's actions or omissions to act were willful and either actually harmed or had the real potential to have harmed the employer's business. Acts of inability, poor judgment, and good faith errors will generally not be sufficient to establish misconduct.

Witnesses should be prepared to provide the initial background information regarding the former employee's employment, describe the final incident that led to the discharge, discuss prior disciplinary action and relevant company policy/procedure. Additionally, the witness must establish what impact or potential impact the former employee's action(s) had on the employer's business, i.e., monetary loss to the employer. Also, note that an isolated instance will generally be insufficient to establish misconduct. Verbal and written warnings that were given for the same reason as the discharge reason are important to show misconduct.

If the final incident is within the control of the employee or they could have prevented this final incident, then it is a case worthy of pursuing. However, if the final incident is beyond the employee's immediate control, then this may be a case which cannot be won. An example might be a discharge for tardiness - the final incident being when the employee's car broke down or they may have had to take their child to the hospital because of an emergency. These are situations the employee could not have prevented.