

Update: August, 2011

Unemployment Update

Hearings: Increasing Your Ability to Win

Purpose of the Hearing

Unemployment hearings are conducted by the state unemployment agencies when an initial determination for benefits has been disputed. The purpose is for the state to uncover and record as many of the facts relating to the individual's separation from their employment as needed in order to make an appropriate decision regarding future eligibility. Decisions regarding benefit eligibility are then made by each state based on their specific rules and regulations.

Your Last Opportunity to Enter Facts into the Record

The burden of proof is always placed on the party that took the action resulting in the employee's separation from employment. The hearing provides you with your final opportunity to ensure all relevant facts and documents have been entered into the claim record. In most situations, the state will not allow the employer to submit any additional information once the hearing has concluded.

Points to Remember When 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 provide a direct response to that question only, without adding additional or irrelevant information.

Answer questions that are within your scope of knowledge without hesitation and with conviction. If you do not know the answer to a question, don't be afraid to say, "I do not know". If you do not understand the question, ask that it be restated or clarified.

During the hearing, always have all state hearing documents and employer related documents, including the former employee's employment records, accessible to you for quick and easy reference.

Progressive Disciplinary Action

The majority of pre-hearing activity involves identifying and preparing first-hand witnesses to provide testimony at the hearing, along with securing and reviewing documents the employer will need to bring to a hearing in order to prove the action taken against the former employee was for good cause. It should also be noted that unless the claimant's reason for separation involves an issue considered to be "gross misconduct", it is just as important to be able to prove the former employee was given every opportunity to adjust their behavior prior to being terminated.

The states prefer the employer to administer a progressive disciplinary policy which involves providing both verbal and written warnings regarding violations of policy, as well as developing a plan outlining the course of action to be taken. This process includes documenting discussions regarding the behavior that needs to change, as well as the steps needed to be taken by the employee to retain their position. Any development plan should include measurable goals with specific time frames for achievement, along with confirmation of the action that will be taken, should the employee be unable to meet the mutually agreed upon goals.

Doing all of the above indicates the employer was willing to work with the employee and gave them every opportunity to correct their behavior before taking the final action to terminate them.

TALX's experience, expertise, and proven results help employers navigate the uncertainty of the unemployment insurance system. For additional information regarding this article or other proactive unemployment cost management techniques, please contact Pete Krieshok at 314-214-7325, or by e-mail at pkrieshok@talx.com or visit our corporate blog at <http://blog.talx.com>.