

Workforce Watch Update

Appellate & Hearing Best Practices

November 2022

Unemployment Hearing: Witness Preparation Guide

The **Witness Preparation Guide** is designed to help witnesses prepare answers in advance to known questions that may be asked based on the reason for separation. This is a very helpful tool whether you utilize our Hearing Representatives or participate alone.

Overview

Prepare for your hearing in advance:

- If participating alone, schedule an appointment with your Hearing Consultant to discuss your hearing. If you will be represented by a Hearing Representative, you will be contacted to schedule a call to thoroughly prepare your first hand witness(es) and gather any additional documentation for this case.
- Have this completed guide, your hearing packet, and additional documentation with you during the hearing.
- All hearings are recorded. All witnesses are placed under oath.
- In attendance will be: the Hearing Officer, the claimant and possibly his/her attorney, your witness(es), your Hearing Representative, and in some states, a member of the state agency.

Issues and Evidence for an Unemployment Hearing

Questions will be asked by the Hearing Officer regarding the claimant's employment history with your company. The first witness to testify should be prepared to answer questions about the Employment History of the claimant.

Employment History

- First day worked and the last day worked
- Position or job title at the time of separation
- Whether the claimant was full time or part time, and the general hours worked
- The name of the claimant's immediate supervisor
- Rate of pay at the time of separation
- Nature of company's business
- Employer witness' full name and job title
- Type of separation: discharge, voluntary quit, or layoff
- Date of the final incident that led to the separation

NOTE: In a discharge case, the employer has the burden of proving the claimant was terminated for a final act of willful misconduct. Either a pattern of disregarding the employer's interest(s) or an egregious act by the claimant must be shown. Circumstances outside of the claimant's control typically do not establish misconduct.

Claimant Discharged/Terminated:

Who terminated the claimant? _____

o This person's job title: _____

Reason given for the discharge: _____

Discharge conducted in person, by phone, or via letter? _____

What was the final incident? _____

Final incident date: _____

o Date employer was made aware of incident (if different): _____

How the employer discovered violation: _____

Who observed or heard the final incident or has firsthand knowledge of the final incident?

The policy the claimant violated: _____

How was the claimant aware of the policy? _____

Claimant signed acknowledgement (with date)? _____

Did the employer discuss the violation with the claimant? _____

o If not, why? _____

Did the claimant admit to the violation? _____

o The claimant's reason for the violation: _____

Did the claimant have any warnings directly related to the final incident? _____

o When they were issued? _____

Was this violation grounds for immediate termination? _____

What was the harm to the employer for this violation? *(This can be to the employer's property, employees, reputation, or finances.)* _____

NOTE: If the claimant voluntarily quit, they have the burden of proving that there was good cause to resign, and had no other reasonable option other than to quit, and had attempted to preserve their employment prior to quitting.

Claimant Voluntarily Quit:

Was the resignation written or verbal (in person or by phone)? _____

To whom did the claimant deliver his/her resignation? _____

Date of resignation: _____

Reason for resignation: _____

Did the claimant make any formal complaints to HR and/or the supervisor? _____

o If yes, what were they? _____

o How did the employer address these concerns? _____

o Who was involved? _____

o When and where did it happen? _____

Was notice provided? _____

Did the claimant work through the notice? _____

Was the claimant paid through the notice? _____

Did the claimant ask for accommodations prior to quitting? _____

o Were any offered or declined? _____

Was the claimant going to be discharged if he/she had not quit? _____

o If so, see "Claimant Discharged/Terminated"

NOTE: The following may be considered a discharge or voluntary quit depending on the facts underlying the separation.

No Call/No Show (e.g. Job Abandonment):

Specific dates of no call/no show(s): _____

Claimant's work schedule for the period of alleged missed work: _____

Attempts made to reach claimant (if any): _____

Did the claimant ever call or report to work after the no call/no show to explain? _____

o If so, what was the reason?: _____

What is the no call/no show policy?: _____

Claimant's knowledge of policy?: _____

Did the claimant request the days off in question?: _____

Prior attendance-related warnings?: _____

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