

## 2010 Best Practices Tip

## Unemployment Eligibility Determinations: When Should You Appeal?

### The Purpose of the Unemployment Insurance Appeal Process

Eligibility for unemployment insurance, benefit amounts, and the length of time benefits are available are determined by the State law under which unemployment insurance claims are established. The appeal process affords both employers and claimants the opportunity to request a review of how those eligibility rules were applied to a specific employment separation or change in employment status.

### Claim Responses vs. Appeals

Responding to unemployment claims with information describing a separation of employment or a change in status is necessary to assist state agencies in making accurate eligibility decisions. While you may respond to a claim with all the facts in your possession, the facts of your separation may not be sufficient to meet the state guidelines for a disqualification or a non-charge to your account. In contrast to the claim response, an appeal is your request for the state to assign a hearing officer to review the facts of a particular case because you believe the eligibility rules have not been properly applied. Requesting an appeal is not appropriate for every eligibility determination.



### When to Appeal

If you disagree with a decision that the claimant is allowed benefits or that your unemployment account is subject to charges on a particular claim and wish to file an appeal, you must be prepared to present facts and evidence to support your argument that the state's decision to allow benefits is incorrect. In Voluntary Quit cases, you must be prepared to argue that the claimant did not have good cause to quit. In a Discharge case, you must be prepared to prove the employee's discharge was for misconduct. As the appealing party, you bear the responsibility to provide the evidence that supports your position. This can be done effectively with:

- First-hand witness testimony
- A written resignation
- Warning notices
- An admission by the claimant
- Written policy prohibiting the claimant's actions
- The claimant's acknowledgement of receipt of the policy

In some situations, you may not have one or more of these proof sources available to you and in this appeal environment, what you think may have happened is not nearly as important as what you can prove.

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### When to Appeal (Continued)

Keep in mind that witness statements, even if properly authenticated, are hearsay and may not be sufficient to meet the burden of proof. If a claimant appears and denies the contents, the claimant's first-hand testimony will typically outweigh the employer's written statements. First hand testimony is always the strongest evidence.

### Voluntary Resignations (Good Cause)

Good cause is generally defined as "such cause, connected with the work, as would lead a reasonable person who is otherwise interested in remaining employed to nonetheless leave the job." While the burden for showing good cause rests with the claimant, you must be prepared to offer an argument that good cause did not exist or evidence that the reason the claimant gave for quitting is not factually correct. Following are some common issues that make winning quit cases more difficult:

- No documentation regarding the reason the claimant left employment
- An employer significantly changed the claimant's work hours, pay, or job duties
- An employer took no action to investigate employee complaints of unsafe work conditions or harassment
- An employer gave an employee the choice of resigning or being discharged

### Discharges (Misconduct)

Misconduct has been defined as a "willful, substantial breach of a material duty owed the employer which tends to damage the employer's interests." For purposes of unemployment eligibility, this means that a single instance of most policy violations will not be considered misconduct, but rather repeated violations of the same rule or policy after being warned. Not all violations of company policy are misconduct. Claimants who are discharged for poor job performance are rarely denied benefits unless you can prove the claimant was able to do the job to your satisfaction and did not. Following are some common issues that result in employers losing discharge cases:

- No final warning
- Not following stated company discipline policy
- No documentation of past policy violations
- Not taking disciplinary action within a reasonable time after the policy violation
- Discharge for an accumulation of incidents as opposed to for a specific final incident

### Deciding to Appeal

If after discussion with your TALX claim representative you disagree with the eligibility decision and you have documentation and testimony to support your argument, a formal appeal and request for hearing can be filed. If all relevant documentary evidence was not already submitted with the claim response, it should be submitted with the appeal. Once the notice of appeal has been received, your TALX claim and hearing consultants will be able to help you prepare to present your case or assign an experienced hearing representative to assist you. Understanding when to file an appeal will help to conserve your organization's time and resources while achieving the best possible results.

If you have questions about the appeal process, please contact your TALX claim, hearing or account representative.