

# UI APPEALS BEST PRACTICES

Presented by:

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# State Determination Received and Appealed

- Did Claimant or Employer file the appeal?
- Was the appeal filed timely?
- If employer appeal, be prepared to prove timeliness.  
Fax, postmark, or electronic confirmation?
- On claimant appeal, if available, look at when the appeal was filed and if it was within the time requirements.

# The Issues

- What are the issues noted on the hearing notice?
- Does the hearing require employer participation?
- Is the employer chargeable on the claim?

# Chargeability

Check with your particular state to determine whether your company is chargeable before you proceed with participating in the hearing.

# Voluntary Quit

- Claimant must be the moving party in the job separation.
- Claimant has the burden of proving case.
- Did claimant exhaust reasonable alternatives to remain employed?
- Allowance of benefits usually results when the claimant's quitting was with good cause attributable to the employer.
- Was the allowance an exemption according to your state?

# Discharge Issue

- What is the misconduct definition in your state?
- A termination for “good cause” or “good business reasons” may not be enough to result in a denial of benefits
- Was there a company rule violated?
- The reason for termination, usually the final incident, must be proved to be deliberate and willful.

# Discharge Issue (cont'd)

- Some states will deny if Gross Negligence is proved.
- Any previous warnings where the claimant was aware their job was in jeopardy?
- Did the final incident in itself cause harm to the employer's interests? This incident may be enough to deny, if proven.

# Hearing Prep Documentation

- Employer documents relied on at the adjudication level may be considered hearsay at the hearing level.
- Direct witnesses to the final incident and who authored any material/relevant warnings is recommended to participate, especially if claimant did not sign the warning.

# Hearing Prep Documentation

- Claimant acknowledgment of Company Policy will be required if company policy was presented.
- Insure claimant has in their possession a copy of all employer exhibits in accordance with your state requirements. Failure to do so may preclude the employer to present.

# Before the Hearing

- Timeline:
  - Department receives hearing request, then refers case to OAH
  - OAH (usually) schedules hearing so that the order can be issued within 30 days (Dept of Labor “A-date”)
  - OAH sends notice of hearing to all involved parties (claimant and employer(s)) at last known address in Department records

# The Hearing!!!

- ALJ convenes hearing at scheduled time
  - Appellant must be there within 10 minutes...or hearing request dismissed!
- Phone hearing unless a party/participant has a need for in-person hearing, such as:
  - deaf/hard of hearing
  - speech impediment
  - mental or physical illness requiring frequent breaks

# The Hearing!!! (cont'd)

- Medium formality
  - ALJ introduces/identifies all parties/participants
  - ALJ confirms contact info
  - ALJ identifies all legal issues to be resolved
  - ALJ explains hearing procedures and answers any procedural questions
    - “I’m not your attorney, so I can’t give you legal advice. However, my role is to give you a full and fair opportunity to be heard. Let me know if you don’t understand something, and I can explain.”

# The Hearing!!! (cont'd)

- ALJ conducts Direct Examination of witnesses
  - Be prepared to just listen for awhile...
- All parties get to cross-examine each witness
  - If there's more you want from witness that ALJ doesn't ask, then go for it (as long as it is relevant)
- Each party gets the (*reasonable*, not unlimited) chance to present rebuttal evidence

# The Hearing!!! (cont'd)

- After all evidence taken, ALJ closes the record
  - Rarely decides on the record, but issues written order within 8 days of hearing/30 days of request for hearing
- Any party can appeal/request review of the Final Order
  - Appeal deadlines are typically 20 days



# ALJ Paradox

- ALJ feels the Dynamic Tension between the duty to develop a full and fair record and the time crunch to get it done.
- Hearing slots can be as little as 60 minutes, with specific start times for each.

# Challenges with Developing Record

- Unprepared parties (“I didn’t know you’d want that”; “I can check on that later, if you want”; “That employee isn’t working today”)
- Incomplete, incoherent, irrelevant, wandering answers (“Well, it all started back in 8<sup>th</sup> grade when Timmy Jenkins stole my girlfriend for the winter formal dance...”; “We posted the job opening in April, but didn’t get any applications until June, so we hired claimant in September...”)

# Challenges with Developing Record

- Angry parties
  - This is not unlike a divorce: messy relationships, hard feelings, desires for revenge; etc.
- Non-submission of documents to every party
- Evasive witnesses/parties
  - Not everyone wants you to know exactly what happened
    - Q: “When did they last pay you late?” A: “I have an email saying they might not make payroll for the month just days before I quit.”
    - True answer: “They last paid me late 8 months before I quit.”

# Easing the Process

- Remedies for a better/smooth hearing
  - Know the burden your client has (if any)
    - Quit- usually CL
    - Discharge- usually ER
- Be professional
  - Don't get upset; It's about the facts, not the witnesses or parties
  - Use a representative to speak for you, if necessary

# Easing the Process

- Know the facts of the case
  - Visit with your client and ask thorough questions of “What happened?”, including:
    - Dates of incidents, trainings, coaching, suspensions, etc.
    - Who was involved in each
    - Where incidents occurred
    - What are the policies
- Stick to relevant facts- only those that will help ALJ focus on why CL isn't working there anymore

# Easing the Process

- Submit documents ahead of time to everyone
  - While a hearing may be continued to allow for the late submission of documents, this is really inefficient and unhelpful
- Answer directly the question asked of you (“Do you know the time?” is a “yes” or “no” question)
- Understand, expect, and be ready for the “Why” question
  - Q: “Did you think CL’s performance would improve?”
  - A: “Of course!”
  - Q: “What led you to think it would improve?”
  - A: “Uhhhh...I *hoped* it would...”



Questions???

Thank you for your time!