

San Marcos River  
Thursday, April 11  
2:45 – 3:45 p.m.



# COUNTY MANAGEMENT & RISK CONFERENCE

APRIL 10-12, 2019 | SAN MARCOS

RESOURCES AND SOLUTIONS FOR COUNTIES



## Unemployment Mock Hearing

*Presenter:*

*Ms. Cynthia Brennan, Unemployment Fund Program  
Specialist, TAC*



# Workplace Harassment

## Unemployment Mock Hearing

Our goal is for you to...

### Gain Knowledge That Impacts Your Win Rate!

- › Learn where a hearing fits in the unemployment **process**.
- › Understand the **procedures** for attending an unemployment hearing, and where people and documents add value.
- › Understand how important evidence and testimony can **impact** your future cases.
- › Know your **resources**, from internal managers to Equifax Hearing Representatives. There are many ways to be successful!
- › Have fun!

## Unemployment Hearings Where do they fit?







### PROCEDURE

- › Initial decision on a claim
- › Decision consultation
- › Either side can appeal an unfavorable determination and request a hearing
- › Gathering the right information during preparation is critical

### BENEFITS

- › Lower unemployment costs and better unemployment payroll tax position
- › Increased win rates

# Unemployment Hearing Procedure

 Can be scheduled in person or by phone, <i>based on state procedures</i>	 Both parties may be represented – <b>6 states</b> require <i>licensed attorney representative</i>
 Burden of Proof determined by the moving party in the separation	 Party with the burden of proof presents its evidence and testimony first
 Cross-examination allowed	 Closing statements allowed in some states

## The Burden of Proof *(in a typical discharge case)*

Employer must prove a deliberate violation or disregard of reasonable standards



## HEARING PREPARATION



# Best Practice: Day of hearing

## Witness Responsibilities



Ensure contact info sent to state, be ready



Arrive 30 minutes prior

Have docs and know chronological account of events

When in doubt, ask your representative or Hearing Officer for clarification

Be ready to testify with personal knowledge

If you don't know the answer, say so. No false answers!

Be positive, keep to the issue, don't volunteer information

Do not present testimony that was not reviewed prior to the hearing

Listen and answer with direct and concise specifics

Crucial records should be provided to hearing officer and claimant prior to hearing

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## Prep with the Pros



### › Our Hearing Reps:

- Hold “**prep sessions**”
- **Explain** the hearing procedure
- **Advise witnesses** regarding testifying in hearings
- **Prepare witnesses** for direct examination
- Prepare for potential **cross-examination** questions
- Examine and **advise on the evidence** necessary to prove the employer's case
- **Prepare evidence** for submission during the hearing

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## THE CASE

The claimant, a customer service rep for an insurance company, was fired after he used **profanity toward a coworker** on the call center floor.

- › The claimant explained his behavior by saying he was **provoked by the coworker**.
- › The claimant had received a **previous verbal warning** regarding his behavior.

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# THE HEARING

**Claimant:** Josh Burrows

**Employer:** Imaginary Insurance Company



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**Played by**  
Kristina Martens  
Appellate Manager

HEARING OFFICER



**Played by**  
Peg Elofson  
Sr. Appellate Manager

EMPLOYER  
REPRESENTATIVE



**Played by**  
Josh Burrows  
Appellate Manager

CLAIMANT



**Played by**  
Dawn Gibson  
Appeal Board Specialist

EMPLOYER WITNESS

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## POLL

» How would you rate the importance of the fact that the person who made the decision to discharge did not appear to testify?

- Very important
- Somewhat important
- Somewhat unimportant
- Unimportant

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HEARING OFFICER



EMPLOYER REPRESENTATIVE



EMPLOYER WITNESS

### Exhibit #1

**From:** Josh Burrows  
**Sent:** February 28, 2018 8:46 PM  
**To:** Dawn Gibson  
**Subject:** The argument between Megan and I

I wanted to explain the argument that occurred between Megan and I.

Toward the end of the night, she asked me about a case I had open for an elderly woman with a \$50,000 bill that I'm trying to get resolved. When Megan asked me about it, I let her know I was working on it. She said "there is no reason why this should still be open. You need to close it." I told her again that I was working on it and it isn't resolved yet. She said then that she was going to close it out. I swear that I said this exactly: "Megan, I respectfully as that you do not close that case." And then she insulted me. She said that maybe if I knew how to do my job, she wouldn't have to close it. Then I said "Megan, you are not my manager so quit acting like it." Because to me, this is none of her business.

From that point, she exploded. She stood up in her cube and started speaking loudly and aggressively. She said that I act like a sensitive girl. She said again that I didn't know how to do my job. I didn't say anything back to her, and then I got a call. It was very difficult to speak with him because my nerves were so built up from her yelling at me. I was able to get through the call, though. After that, I sat at my desk quietly. Megan got up and continued the argument and said that I act like a 2 year old. At that point, I honestly lost it and blurted out "quit acting like everyone's manager, you stupid dumb bitch." In retrospect, I understand that I should not have said that, but my emotions were built up from all the yelling and name calling that she had been doing. And even when I tried to sit there in silence, she continued the argument. I just reacted.

Then she got up and walked up to me as if she was going to start a physical altercation. She said "I don't know who you think you're talking to, but I don't play that." I turned away and faced my computer. I thought the conversation was over, and then she said "I'm just sayin, people like that might get beat down in the parking lot." She said it to someone else, but I knew she was talking about me. I said "are you serious? You're going to threaten me now? I have tried to let this go 3 times, but you just keep talking and talking and now you might lose your job over it."

After I said that, she was quiet. Not another word was said from either of us.



HEARING OFFICER



EMPLOYER REPRESENTATIVE



CLAIMANT



EMPLOYER WITNESS

## POLL

- › How would you rate the effectiveness of the verbal warning in the employer's case?
- Very effective
  - Somewhat effective
  - Somewhat ineffective
  - Ineffective

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HEARING OFFICER



EMPLOYER  
REPRESENTATIVE



EMPLOYER WITNESS

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## POLL

- › How important is the fact that there was a delay between the final incident and discharge?
- Very important
  - Somewhat important
  - Somewhat unimportant
  - Unimportant

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HEARING OFFICER



EMPLOYER REPRESENTATIVE



CLAIMANT



EMPLOYER WITNESS

## POLL

» Do you believe the employer has met its burden of proof?

- Yes
- No
- Unsure



HEARING OFFICER



EMPLOYER REPRESENTATIVE



CLAIMANT

## POLL

- » How would you rate the importance of the fact that the claimant failed to bring a witness to substantiate the threat?
- Very important
  - Somewhat important
  - Somewhat unimportant
  - Unimportant



## POLL

- » How important is the fact that the claimant raised a potential discrimination issue?
- Very important
  - Somewhat important
  - Somewhat unimportant
  - Unimportant



HEARING OFFICER



EMPLOYER REPRESENTATIVE



CLAIMANT



EMPLOYER WITNESS

## POLL

» Did the ALJ find in favor of the claimant or the employer?

- The employer
- The claimant
- Unsure



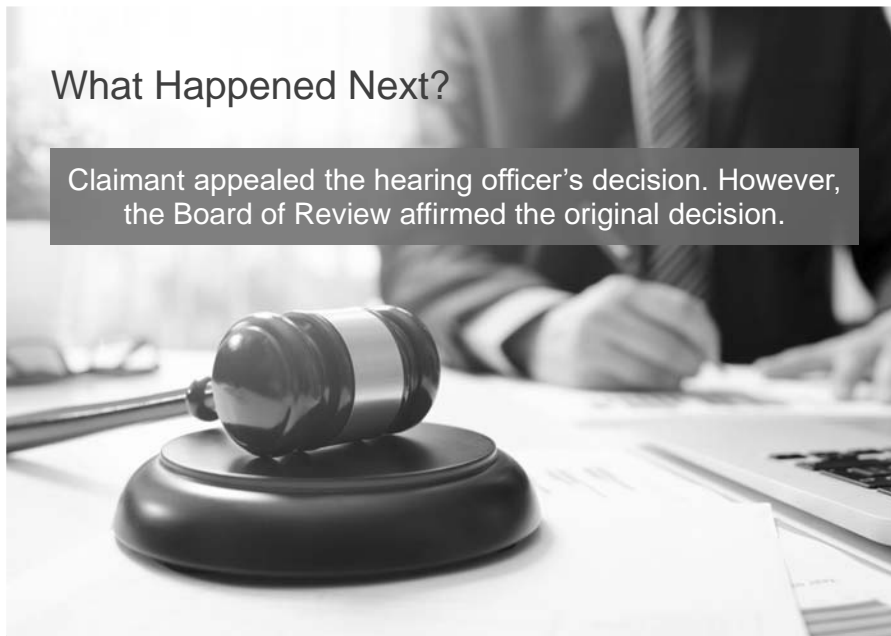
### The Decision

Hearing Officer found in favor of the employer because...

- » Claimant's language was objectively rude and offensive regardless of any provocation that may have occurred.
- » Customers could have heard his language over the phone, which could have damaged the employer's business

## What Happened Next?

Claimant appealed the hearing officer's decision. However, the Board of Review affirmed the original decision.



## Take-Aways

### Impact Your Win Rate the Right Way!

- › An **unemployment hearing is the last step** in the unemployment protest process.
- › Different states may decide a case differently, even if the facts are the same
- › Examine each element of **what must be proven** to decide what documentation and witnesses will be necessary to prove your case.
  - Careful consideration prior to hearing, can make or break your case
- › A discharge without a prior written warning can still result in a finding of misconduct.
- › **You have experts** on your side!