Unemployment Mock Hearing

Presenter:
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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, based on state procedures
- Both parties may be represented – 6 states require licensed attorney representative
- 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)

Claimant’s Evidence

Employer’s Evidence
- Documentation
- Witness Testimony

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

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

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.
THE HEARING

Claimant: Josh Burrows
Employer: Imaginary Insurance Company

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
Exhibit #1

From: Josh Burrows  
Sent: February 26, 2019 9:46 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 mean that I said this exactly: “Megan, I respectfully ask that you 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 chair 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 her 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 she acted 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 why 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 still here, 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? Have you ever talked to 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.
How would you rate the effectiveness of the verbal warning in the employer's case?
- Very effective
- Somewhat effective
- Somewhat ineffective
- Ineffective

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

Do you believe the employer has met its burden of proof?
- Yes
- No
- Unsure
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

How important is the fact that the claimant raised a potential discrimination issue?

- Very important
- Somewhat important
- Somewhat unimportant
- Unimportant
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!