

2010 Best Practices Tip

Unemployment Appeal Hearings: The Importance of First-Hand Evidence

The Purpose of Unemployment Hearings

Given the state of the current economy, controlling your unemployment costs is critical to your business. One of the most impactful ways to do that is to ensure that a former employee does not collect unemployment benefits if that claimant's separation is disqualifying under state law.

First-Hand Evidence

To prove at an unemployment hearing that a claimant's separation is disqualifying, it is not enough to simply tell the hearing officer what happened. In the case of a discharge, the employer must *prove* misconduct in order for the claimant to be disqualified from benefits. If the claimant quit, he has to prove he quit with good cause to be allowed benefits. In either case, the key to winning at hearing is first-hand evidence.

First-hand evidence includes:

- First-hand witness testimony
- A video or audio recording
- Time sheets or schedules
- Warning notices
- An admission by the claimant
- A written resignation

First-hand witness testimony is testimony at the hearing, under oath, from someone who saw what happened or who was present at the time of the final incident

- If the claimant was discharged, the best witnesses are the people who saw or heard the final incident at the time it happened.
- If the claimant quit, the best witnesses are the people who know the most about the reason the claimant gave for quitting. The best first-hand evidence is a written resignation submitted by the claimant



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Hearsay Testimony

Hearsay testimony is testimony at the hearing, under oath, from someone who heard about what happened from another person or who saw or heard an incident on tape after-the-fact. Some states are prohibited by law from making a finding of fact based on only hearsay evidence.

Hearsay testimony is not as credible as first-hand testimony because the person who actually witnessed what happened at the time is not testifying under oath at the hearing and therefore cannot be questioned by the hearing officer.

- *If the claimant appears at the hearing and denies everything, the claimant's first-hand denial almost always outweighs hearsay testimony. End result – the claimant probably wins.*

Hearsay Evidence Includes:

- Testimony about an interview of the people who saw what happened
- Testimony about what was seen on video or heard on tape, unless the tape itself is presented as evidence
- A written statement by someone who does not appear to testify
- Documentation created by someone who does not appear to testify
- Testimony about a complaint made by a customer
- Testimony by anyone who did not see what happened, but who made a conclusion about the claimant's activities based on what they saw or heard later



Hearing decisions often come down to a question of credibility. The hearing officer needs to decide who is the most credible to make his findings of fact. He uses the findings of fact to decide whether the facts support a finding that the claimant should be disqualified from benefits. He needs reliable information (first-hand evidence) to make a decision that a claimant should not collect unemployment benefits – much like you need reliable information to make a decision that an employee should be discharged.