Protesting Unemployment Claims – What Is Needed

Discharges

For a claim to be denied in a discharge situation, the burden of proof is on the employer to show the claimant was discharged for an act of **willful misconduct**. Misconduct for unemployment purposes is defined as a deliberate or intentional action that is detrimental to the employer's best interest. This could be acts like a violation of company policy, insubordination, etc. Some egregious acts can be ruled as misconduct with a single incident, but most situations require proof of prior warnings and making the claimant aware their job is in jeopardy.

When responding to an unemployment claim, there are three questions that need to be answered and supported with documentation:

1. **What are the details of the specific final incident that caused the claimant's discharge?**

Helpful details/documents

- What exactly did they do?
- How were their actions verified?
- What was their response when they were confronted with the allegations? Did they deny or admit their actions?
- For attendance discharges, what reason did they give for the final absence or tardy?
- Were there any witnesses to the claimant's actions?
- A copy of a termination document and witness statements can be helpful, however keep in mind that any documents submitted can be viewed by the claimant.

2. **What was the policy that they violated and how were they made aware of the policy?**

Helpful details/documents

- Copy of the specific policy violated (not the entire employee handbook)
- Copy of a signed acknowledgement for receipt of the handbook or specific policy
- Proof of claimant's attendance at any staff meetings or in-service where the policy was discussed

3. **When was the claimant previously warned, what were they warned for, and how were the warnings communicated to them?**

Helpful details/documents

- When were warnings for the same or similar issues to the final incident?
- Was the claimant made aware that their job could be in jeopardy if the action was repeated?
- Copies of all disciplinary actions, PIPs, notes from coaching sessions, etc. to provide with the claim protest

Voluntary Quits

In a voluntary quit separation, the burden of proof is on the claimant to show that they quit with good cause related to the employment, and that they pursued all available alternatives prior to quitting. In some states, they can be found eligible for benefits for just showing good personal cause, however they still must show that they pursued all available alternatives prior to quitting.

When responding to an unemployment claim in a quit situation, the employer needs to be prepared to provide some or all the following information depending on the specific circumstances:

- A copy of any written resignation. This could be a letter, an email, text, or any other written notification of their resignation.
- A statement from the individual that the claimant notified of their resignation.
- If you know the claimant is going to allege work-related reasons for resigning, any details of meetings or discussions held with the claimant to discuss their concerns.
- Any written response provided to the claimant regarding allegations of work-related issues.

These are the general details that are needed in most cases, but each case is unique so the specific information can be different from case to case.

Also keep in mind that if an employee is allowed to resign in lieu of being discharged or is asked to resign, the unemployment agency will rule on their separation as a discharge since the employer is the moving party in the separation and the claimant did not have an option to remain employed.