

Defending a Claim for Unemployment Benefits
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When I was a young lawyer (a long, long time ago), I used to do a lot of unemployment compensation hearings for my clients, defending employers against claims for benefits typically where the employee had been terminated for a substantial business reason. In those days, the standard that was applied was one of “willful disregard of an employer’s interests,” a standard that was very difficult to meet. The “system” was viewed as very unfriendly to employers and the odds of prevailing absent really egregious behavior by the employee were not good. Times have changed for the better for employers.

My recent experience in these hearings indicates things have changed dramatically and to the advantage of the employer. The standard now employed by the Department of Economic Security is more of a negligence standard which significantly lowers the level of behavior by the employee that the employer is required to show in order to disqualify the employee for benefits. The potential for an employer winning their case in front of the Department is much better than it was under the prior standard.

Given that the playing field is now a little more favorable for employers, you may want to consider whether to contest a claim for benefits if you terminate an employee. If the termination is simply a reduction in force and the employee did not engage in any bad behavior or poor performance, he or she will be eligible for unemployment and there is no basis to contest their claim. If, however, they were terminated for poor performance, failure to follow policies or rules or other breaches of standard of reasonably expected conduct, they may not be eligible for benefits.

If you are considering challenging a claim for benefits, consider the following checklist:

1. What is the specific event or behavior that caused the termination?
2. How strong is your proof of that event and, in particular, what kind of written proof can you bring to the hearing?
3. Who can tell your side of the story? Is the supervisor who was directly involved well-spoken or will he/she trip over her own words?
4. Do you have specific policies or rules that were violated? Are they in writing and did the employee have knowledge of them?
5. Did the employee fail to do any aspects of his job that were expected of him? (Making sales calls, filing reports, attending meetings etc.) Were those problems documented?
6. If the termination is based upon a course of action over time, did you document the individual events that led up to the decision to terminate?

If you are considering contesting a claim for benefits for a terminated employee, please call and mention that you read this article and you will receive a free consultation on how to defend an unemployment claim.