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Strategies for Winning Discharge Unemployment Claims

To succeed when protesting unemployment claims for discharged claimants, the employer must prove to the unemployment state agency that the employee was discharged for misconduct. Most states commonly define this as a willful violation of the standards of behavior an employer has the right to expect of an employee. So, how can you prove misconduct? Ask these questions before you discharge any employee...

- Did the employee violate a known rule or a policy?
- How did the employee know of the rule or policy?
- Did the employee know that if they continued with the behavior that they could be discharged?
- Did the employee know their job was in jeopardy?
- Was the employee given a warning/coaching and the opportunity to improve?
- Did the employer follow their own internal progressive disciplinary policies?

As with any discharge, documentation is the key and the employer will have the burden of proof. When the state is reviewing a discharge from employment, they will expect that the employee was given every opportunity to improve their behavior prior to discharge. If you fired the claimant for a policy or warnings violation, attendance problems, or customer complaints, submit copies of the policy, attendance records, warnings or complaints. Typically, attendance and performance discharges are the hardest and most difficult to prove misconduct. Personal illness is not misconduct. Tending to the illness of one's minor children is not misconduct. However, if an employee fails to provide proper notification of an absence, that may be considered willful intent. In a performance discharge, inability is not misconduct and neither is incompetence. If the employee truly had no ability to do the job, the state will view this as a poor hiring decision. Instead, show how the claimant failed to do the best he or she could.

The states will also expect that the employee was treated fairly and consistently with other employees within the organization and that the employer followed their own internal policies and procedures. If you have a progressive disciplinary policy, make sure you're following it. In other words, if your policy or work rules require a verbal warning, then written warnings, and final warning, make sure you're following those steps. The state will also be looking for what the potential harm was to the employer - How did the claimants actions hurt the employer?

One last item to consider is other types of claims or lawsuits when responding to an unemployment claim. Many plaintiffs' lawyers use unemployment claims as a strategy to determine how good their client's cases are. They may use evidence discovered during the claim appeal process in other claims or lawsuits.

Providing the states with effective and thorough documentation is critical in minimizing your exposure to unnecessary unemployment costs. Employers Edge is committed to responding to the states, on your behalf, with the details necessary that provide you the best opportunity to win your unemployment claims.