Briefly: An Unemployment Case Analysis

Background

The claimant was discharged for receiving two written warnings within a year period. He was allowed benefits upon a finding that he was discharged, but not for misconduct connected with the work. The employer appealed, and a hearing was scheduled before an administrative law judge.

At the Hearing

The Employer’s Evidence: The employer offered evidence and testimony to show that the claimant, who had received the employer’s progressive disciplinary policy at hire, was discharged for violating it. The policy provided that two written warnings with suspensions within a twelve-month period would result in discharge. The claimant had received a written warning and suspension for walking off the job. The final incident that led to the claimant’s separation occurred five months later when the claimant left his assigned post at a production machine to go smoke a cigarette. The claimant’s failure to work the machine caused it to back up and spill the employer’s product on the floor. The claimant received a second written warning and suspension for the incident. After an investigation, the claimant was discharged.

The Claimant’s Evidence: The claimant did not appear at the hearing to offer evidence or testimony.

The Hearing Decision

The administrative law judge (ALJ) found that the claimant was discharged for misconduct connected with the work, and he was disqualified from benefits. The ALJ found that the final incident was a deliberate violation of a reasonable employer rule. As the claimant had already received a written warning and a suspension for walking off the job, and was aware that two such warnings could result in his discharge, the final incident was sufficient to rise to the level of misconduct connected with the work. The claimant appealed and requested a new hearing. The claimant failed to appear for the appeal hearing because he “got the date mixed up” and thought the hearing was on a different day.

The Board of Review Decision

The Board of Review agreed with the administrative law judge and the claimant remained disqualified. The Board refused to reopen the matter and schedule a new hearing. The Board found that the claimant’s mistake regarding the date of a hearing was simple negligence and was not good cause to reopen the hearing. After reviewing the record of evidence presented at the hearing, the Board found that the ALJ’s Decision was fully supported by the facts and the law, and the claimant remained disqualified from benefits.

Takeaways

1. A party must generally prove good cause for failing to appear at a hearing in order for the state to reopen a case. States will generally not easily schedule a new hearing if a party misses an originally scheduled hearing. Good cause to fail to appear can include illness, emergency, and other reasons which would be outside of the party’s control to avoid. Mistakes and failure to properly read the hearing notice are usually not considered good cause sufficient for the state to schedule a new hearing. If you are unable to attend a hearing at the time it is scheduled, you may request postponement prior to hearing, giving your reason for your inability to attend. Generally, states expect parties to set aside their daily work and personal schedules to attend.

2. In most cases, the employer must prove that a claimant had been warned for a similar infraction for a finding of misconduct. Unless the final incident is particularly egregious, states generally require that to prove misconduct, the employer must prove that the claimant had a prior warning for a similar incident. This would put the claimant on notice that his behavior is not acceptable and could result in discharge. In this case, the employer proved that the claimant had received a specific progressive disciplinary policy which provided that two policy violations which were serious enough to result in written warnings with suspension could result in the termination of his employment. The claimant was therefore on notice that the final incident could result in discharge.*

*This specific set of facts might not result in a finding of misconduct and a disqualification in every state. A state could require a warning for the same behavior, and another might not disqualify because the claimant was issued a warning regarding the final incident and then discharged for the same incident. Please contact your unemployment consultants with questions.