

**Win your Unemployment Hearings!**  
**(in three easy steps)**

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**Step 1: Show up! (easy, right?)**

- Missing deadlines is the worst thing you can do!
  - Your initial response
  - Follow up phone calls
  - Appealing for a hearing
- Call in on time
- Check dates on everything from TWC




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**Step 2: Testimony!**

- Your story:
  - Stick to the facts
  - Sound authoritative, but don't argue
  - Be concise
  - If it's relevant, bring it up (This is your only chance!)
  - If it's not, don't (Don't volunteer extra information or get sidetracked.)
- The claimant's story:
  - Anticipate his response by reading the hearing notice
  - Point out any changes or inconsistencies in his story
  - Ask the HO to let you rebut things after the claimant's testimony
  - Never ask a question where you don't already know the answer




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**Step 3: Documents!**

- Employee Handbook
- Policy Guide
- Handbook receipt page
- Disciplinary warnings
- E-mail
- Video
- Resignation or Termination Letter
- Exit Interview form
- Medical releases
- Letter of Reasonable Assurance




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**The Telephone Hearing**

- Read the hearing notice before the hearing
- Send documents to both the claimant and HO in advance
- Have the right witnesses ready
- Sound like you know what you're talking about
- Speak up!




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**Strategy**

- The most direct knowledge should testify first
  - Second-hand information is not as believable as it is from the source
- Be calm
  - Your attitude and demeanor are important. Don't get into an argument; it hurts your credibility.
- Refer to documents
  - It's hard for the claimant to deny a warning when you have his signature on it
- Don't use words like inability or incompetent
  - Show that the person was capable of performing the work, but failed to do it




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**The Burden of Proof**

- Who goes first?
  - Fired = the employer must show misconduct
  - Resignation = the claimant must show cause
  - Asking someone to resign instead of termination is still termination, so the employer must prove misconduct
- Prove it!
  - You can have the best reason in the world to terminate someone, but you must prove it!
    - Documents, testimony, statements, video, etc.




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**The Law**

- Unemployment law is different than education law
  - No educator protection in hearings
  - Tell your full side of things. Give details.
  - Don't say, "The person was asked to leave in the best interests of the district." This is not enough to meet your burden.
  - "At-will" employees still must be given a reason if you want to deny them benefits




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**The Final Incident**

- What was the final incident that lead to termination/quitting? (the straw that broke the camel's back.)
- Most of the decision will be based upon this reason, so wait for a good one when you fire.
  - Examples:
    - Final unexcused tardy/absence
    - Insubordination
    - Repeat offense after a final warning
    - Failed to follow directive, etc.




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**Fired or Quit?**

- Quit means it was the claimant's idea, not yours
- Good cause to quit that is connected with the work means:
  - Such cause, related to the work, as would induce a person who is genuinely interested in retaining work, to, nevertheless, leave the job.
- If you offer to let them quit instead of firing, you still need to prove misconduct, particularly with contract employees




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**Good Cause Examples**

- What does this mean to you?
  - Substantial change in hiring agreement – moving from day to night shift, reassignment
  - Reduction in wages/hours -more than 20% cut
  - Doctor instructs claimant to quit (not claimant)
  - Failure to address complaints - ignoring legitimate issues
  - Harassment or discrimination - hostile working conditions
  - Spouse relocation - disqualify for only six weeks
  - Domestic violence (must be proved by court documents)




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**The Decision**

- Decisions usually mailed within a week
  - Case History
  - Findings of Fact
  - Conclusions
  - Decision
- If you miss a hearing, you must show good cause for failing to appear




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### Appeal to Commissioners

- If you disagree, you can appeal to the Commissioners
  - 14 days from the date mailed, not the date received
  - Commission attorneys review the recording
  - Can't submit new evidence (usually)



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