


Protecting Your Rights

2 things vital to protecting your rights & your employer account:

1. Providing prompt, detailed information:
 1. DOL 800 (Separation Notice)
 2. DOL 1199 FF (Employer Questionnaire)
2. Providing a **timely response** to fact finding requests.

An employer who has not submitted timely information **will not receive credit** for overpaid benefits when the employer's appeal results in a disqualification.




Protecting Your Rights

2 things vital to protecting your rights & your employer account:

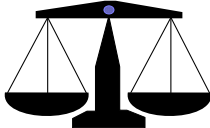
1. Providing prompt, detailed information:
 1. **DOL 800 (Separation Notice)**
 2. **DOL 1199 FF (Employer Questionnaire)**
2. Providing a **timely response** to fact finding requests.

Important Note: You must have evidence to show information was sent timely.



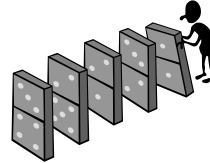
Quits & Discharges

Some Basics



“What The Examiner Is Looking For.....”

When We Begin the Claims Examining Process

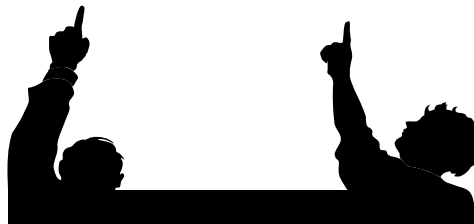



- Determine: Who is the moving party? (this determines a quit or discharge)
- Then determine: Reason (this determines questions)

2 BASIC TYPES OF QUILTS




- Quit for personal reasons
- Quit for job related reasons





SOME EXAMPLES

- Quit for “personal” reasons
 - lack of childcare
 - transportation problems
 - relocating
- Quit for “job related” reasons
 - break in employment contract
 - health related caused by or affected by job.



THE LAW: QUITTING WORK

- Section 34-8-194(1) of the Employment Security Law says:

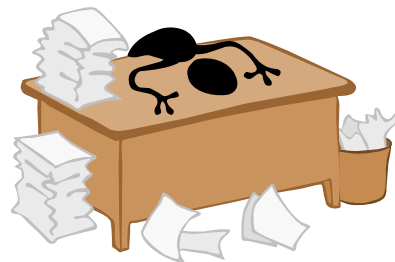
“...if you quit your most recent employer without a good reason connected to the work, you **cannot** be paid unemployment benefits.....”

THE LAW APPLIED TO THE EXAMPLES OF QUILTS




- Quit for “personal” reasons
 - lack of childcare
 - transportation problems
 - relocating **Disqualifying**
- Quit for “job related” reasons
 - break in employment contract
 - health related caused by or affected by job. **Potential to allow**

BEFORE BENEFITS CAN BE PAID FOR QUITTING....




The claimant must show that he/she exhausted all alternatives to quitting and would not be expected to continue working under the conditions.




4 BASIC TYPES OF DISCHARGES

- Performance
- Rule violation
- Conduct
- Attendance



OUR CONCERNS AND OUR INTENT



Discharges - Our concern



Is the claimant
at fault?



- Whether the claimant, through fault or negligence, brought about his or her separation.
- Was there misconduct on behalf of the claimant?

Discharges - Our Intent



- Find the **reason** for discharge.
- Determine if claimant had **knowledge and control**.
- **Apply the law** concerning the issue.

Discharge: Questions to Cover



All Separations:

1. Last day of work.
2. Date and specific reason for separation.
3. Date & details of the final incident. (witnesses, etc.)
4. Effects on the employer (if applicable)

SPECIFICALLY COVERED FOR:

Attendance - Dates/reasons for absences

Performance - inability or misconduct?

Rule violation - What rule? How aware?

Conduct - Details/witnesses of incident.

All Separations:

5. History of warnings
6. Was he/she told the job was in jeopardy.

Burden of Proof in Discharge Cases



- The employer has the burden of persuasion in a discharge.
- The assumption is with the claimant.

34-8-194(2) “....the burden of proof of just discharge or suspension for cause....shall be on the employer and the presumption shall be with the employee.....”

THE LAW: DISCHARGE



Section 34-8-194(2)(A) of the Employment Security Law says:

“.....you **cannot** be paid unemployment benefits if you were fired for not following your employer’s rules or orders. In addition, you cannot be paid unemployment if you were fired for failing to perform the duties for which you were hired, if that failure was in your control.....”

Section 34-8-194(2)(A)

“.....you **cannot** be paid unemployment benefits if you were fired for not following your employer’s rules or orders. In addition, you cannot be paid unemployment if you were fired for failing to perform the duties for which you were hired, if that failure was in your control.....”

1. Performance
(within your control)
2. Rule violation
3. Attendance
(not properly notifying)
(absent for reasons you can control)

All of the above includes knowledge and control of the rule or behavior.)

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FACTORS TO CONSIDER

- How much control did the claimant have?
- How much knowledge did he/she have?
- Can fault be assigned?
- Was there misconduct?

Note: Inability alone to perform the job is not disqualifying under the law. There must be some fault chargeable to the claimant for failure to attain required proficiency.

THE LAW: DISCHARGE FOR PERFORMANCE

Section 34-8-194(2)(B)(i) of the
Employment Security Law says:



“.....You **can** be paid...if you were
fired for failure to perform your job
duties, but you made a good faith
effort and were simply unable to do
the work.....”

DISCHARGED FOR PERFORMANCE

Some things we'll need to know:

- Was it inability or misconduct?
- Did he/she ever meet the standard?
- No? No fault / was it inability?
- Yes? What changed? When?
Did job duties increase?
Was job upgraded? - computer skills
New Supervisor?

Section 34-8-194(2)(A)

“.....you **cannot** be paid unemployment benefits if you were fired for **not following your employer's rules or orders**. In addition, you cannot be paid unemployment if you were fired for failing to perform the duties for which you were hired, if that failure was in your control.....”

1. Performance
(within your control)
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WHAT THE LAW SAYS ABOUT BEING DISCHARGED FOR VIOLATING A RULE

Section 34-8-194(2)(B)(iv) of the
Employment Security Law says:



“.....In some cases you **can** be paidwhen you were fired or suspended for violating a rule. If you were not made aware of the rule.....You can also be paid if the rule was unlawful or not reasonably related to the work....prior enforcement will be considered.....”

DISCHARGED FOR RULE VIOLATION

Some things we'll need to know:

- What rule did he/she violate? When?
- Was he/she aware of the rule? How?
- Was he/she warned? How? When?
- Is there a progressive discipline program?

DISCHARGED FOR CONDUCT

Some things we'll need to know about this issue:

- What were the date & details of the incident?
- Were witnesses questioned?
- Was the employee proven guilty?

Section 34-8-194(2)(A)

“.....you **cannot** be paid unemployment benefits if you were fired for **not following your employer's rules or orders**. In addition, you cannot be paid unemployment if you were fired for **failing to perform the duties** for which you were hired, **if that failure was in your control**.....”

1. Performance
(within your control)
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3. **Attendance**
(not properly notifying)
(absent for reasons you can control)


All of the above includes knowledge and control of the rule or behavior.)

DISCHARGE FOR ATTENDANCE



Some things we'll need to know:

- What were the reasons for the absences?
- What was the date & what were the details of the last incident?
- Did he/she properly notify the employer?
- What does overall attendance look like?



THE LAW: DISCHARGE FOR ATTENDANCE

Section 34-8-194(2)(B)(iii) of the
Employment Security Law says:

“..You **can** be paid unemployment
benefits if you are fired or suspended for
absences caused by illness of yourself or
a family member, if you properly notify
your employer...Rule..says that if you are
fired for absences or tardiness, all...will
be considered and not just the last one..”

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1. What were the reasons
for the absences?
2. What was the date &
what were the details
of the last incident?
3. Did he/she properly
notify the employer?
4. What does overall
attendance look like?

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3. Did he/she **properly notify** the employer?
4. What does overall attendance look like?

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- 1.What were the reasons for the absences?
2. What was the date & what were the details of the last incident?
3. Did he/she properly notify the employer?
4. What does **overall attendance** look like?

Employer Information



Last day worked: 11/16/09

Discharged: 11/16/09

Reason: Overall attendance.

Final incident: 11/16/09 tardy 10 minutes.
Employee due in at 8am arrived at 8:10am

Attendance Record

Warnings

09/28/09 Oral warning
(witness: Carl Smith, Supv)

10/18/09 Written warning

11/13/09 Written: final

11/16/09 Discharged

| | | |
|----------|--------|--------------|
| 09/15/09 | absent | car problems |
| 09/20/09 | absent | sick |
| 09/28/09 | tardy | 23 min |
| 10/01/09 | absent | dog to vet |
| 10/17/09 | absent | car problems |
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What Information do I need to include?



- **Attendance:**
Dates/reasons for absences/ tardies.
Was employer properly notified?
- **Performance:**
Inability or misconduct? Why?
- **Rule violation:**
Quote rule
How was he made aware? When?
How did he violate the rule?
Details of final incident
- **Conduct:**
Witnesses, circumstances,
specific details.

Discharge: Questions to Cover



All Separations:

1. Last day of work.
2. Date and specific reason for separation.
3. Date & details of the final incident.
(witnesses, etc.)
4. Effects on the employer (if applicable)

SPECIFICALLY COVERED FOR:

Attendance - Dates/reasons for absences

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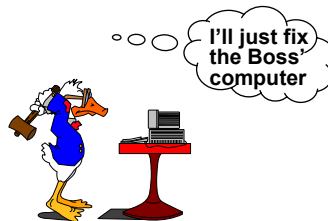
Rule violation - What rule? How aware?

Conduct - Details/witnesses of incident.


All Separations:

5. History of warnings
6. Was he/she told the job was in jeopardy.


DISCHARGE PENALTIES



- Rules, orders or instructions 10xWBA
- Assault 12xWBA
- Theft under 100.00 12xWBA
- Intentional Property damage 16xWBA
- Theft over 100.00 16xWBA




Burden of Proof in Discharge Cases



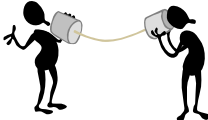
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Claims Examiner: first level

- **Examiner’s Review**
 - **Informal**
 - **Notice**
 - **Representation**
 - **Telephone Call (if necessary)**
 - **Witnesses**
 - **Rebuttal Opportunity**
 - **Written, timely determination**
 - **Appeal Rights**



Appeals - Second Level

Lower Authority:
Administrative Hearing Officer



- Formal Hearing
- De Novo
- Recorded
- Sworn testimony
- Notice of Hearing (date, time, issues)
- Representation
- Telephone Hearing (in-person, if requested)
- Witnesses
- Written, timely decision
- Appeal Rights




Appeals - Second Level

Lower Authority:
Administrative Hearing Officer




- Hears contested unemployment insurance cases
- Administers Employment Security Law
- Neutral party who gathers facts, draws conclusions
- Determines if claimant will receive benefits
- Determines if employer to be charged for those benefits
- Assists BOTH parties





Appeals

- Have procedures in place to handle Claims Examiner's determination (to decide if you wish to appeal).
- Be familiar with Employment Security Law and Rules of the Georgia Department of Labor.
- Be prepared. This is an actual court proceeding.

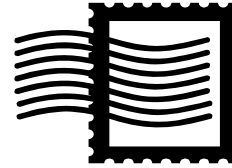


Appeals

- Filing Deadline*
 - 15 days from date initial determination is mailed
 - must have post office cancellation date (no postage meter stamps are used to calculate timeliness)
 - may be faxed or hand-delivered to local GDL office

*You must prove that you requested the appeal by the date listed.

Appeals



- Filing Deadline
 - If it appears the appeal is not filed within the 15 day time limit, the Administrative Hearing Officer will hear the appeal on the timeliness issue first and *could* dismiss the appeal because it was not filed timely.

Once Appeal received:



- You will be notified by mail that the appeal has been accepted.
- You will receive copies of the entire file with both claimant's and employer's statements.
- You will receive the Appeal Process pamphlet.

Please read information:




- To know what to expect in the appeal hearing.
- To be able to prepare defense.
- To know which parties to have present to refute any testimony given by claimant.
 - ***Remember that witnesses must be present. No signed document can give testimony for them.***


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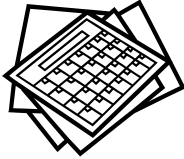
Correspondence:



- All appeals are handled through Appeals Section in College Park (NOT through local career centers).
- All correspondence or information must be directed there.
- Do not send information to the local career center.



Scheduling requests:




- Provide dates not available immediately to Appeals (can even provide when filing appeal)
- Can request in-person hearing (but is subject to approval of Chief of Appeals)



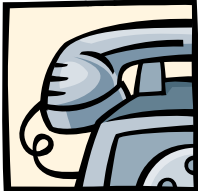
Notice of Hearing includes:

- Date, time and place
- Whether in-person or by phone
- Issue(s) to be discussed
- Instructions for participating in the hearing
- Name of Hearing Officer*


(Please do not try to contact the Hearing Officer. The Hearing Officer cannot discuss any case with either party either before the hearing or after the conclusion.)




Telephone Hearing




If hearing is by phone, check phone number to ensure accuracy. It is the employer's responsibility to furnish correct phone number, extension or actual person to contact.




Postponements:




- Request in writing, giving details for request (fax # on pamphlet)
- Furnish any documentation to support reason (medical excuse, court appearances)
- If you have **NOT** been notified that postponement granted, plan for hearing as scheduled
- Business engagement will not constitute good cause to postpone appeal




Show Cause




- If you miss your hearing, you may request to reopen appeal (show cause hearing)
- Request should state grounds for the request and the reason for not attending the original hearing
- Hearing will be scheduled to determine if good cause has been shown to reopen the appeal




Show Cause




- “Good Cause” is defined as circumstances beyond the control of the parties
- Bring any evidence necessary to prove (or if by phone, fax evidence prior to hearing)
- If good cause not shown, AHO will not rule on any other issue
- If shown, testimony will be taken on the original merits of the case




Preparing the Evidence




- Begin to gather evidence as soon as you request appeal (or notified appeal has been requested)
- Be able to verify dates of employment, total wages earned and reason for separation
- Examples of evidence: time cards, payroll records, warning notices, company rules, employee handbooks, medical records




Preparing the Evidence




- Witnesses must be available for testimony.
- Written statements, even if sworn, do not constitute evidence and **will not** be admitted.




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Subpoenas




- Claimant can subpoena documents prior to hearing
- Both parties must ensure that appropriate individuals receive subpoena no less than 24 hours prior to hearing
- Make request for subpoena to Appeals Section




Documents




- Send the Appeals Section copies of any documents you intend to submit
- Send same documents to opposing party
- Employer's responsibility to ensure receipt by opposing party
- Failure to send in time for review prior to hearing could result in delay or rescheduling of hearing




Documents




- Bring all documents to hearing or have them with you if by phone
- If in person, have copies for AHO and claimant
- Have ready for reference
- If receive documents from other party prior to hearing, read and be familiar




Witnesses




- Must have witnesses available at hearing. (The AHO will allow 10 minutes for all parties to be in place and then start with or without witnesses. The AHO does not have to allow witness testimony if late.)
- If witnesses unwilling to testify, a subpoena can be issued by notifying Appeals Section. (It is your responsibility to deliver.)




The Hearing




- AHO calls case and determines who will go to hearing room first.
- If employer has several witnesses, AHO will ask employer who will be spokesperson for the employer.



The Hearing




- Spokesperson goes to hearing room first (or if by phone, stays in room alone to receive instructions.)
- Spokesperson cross-examines opposing party/witnesses (you should want someone with extensive knowledge of separation and employer's policies.)



The Hearing

- AHO will give instructions on how the hearing will be held
 - Under oath
 - Documents to be marked
 - Issues to be covered
 - How testimony will be given
 - Appeal rights
- AHO controls the hearing
- AHO does not prove your case, but assists only



The Hearing

- Issues to be covered
- Documents to be entered
- Take testimony/evidence from both parties
- Determine on motion documents should be received and considered
- Cross examine by opposing party
- Explain or rebut evidence or testimony
- Closing statement

The Hearing



- Decision will be mailed to both parties
- Ensure AHO has correct mailing address
- Upon receipt, if you disagree, may file appeal to Board of Review

Third Level



Board of Review

- 3-member panel appointed by Governor
- Reviews taped record only
- Accepts written argument
- Requests for reconsideration
- Affirms, modifies, reverses or remands
- Appeal rights

Fourth Level Appeal to Superior Court



Superior Court

- File in county where work was performed (or Fulton County if performed out of state)
- Procedural review

Appellant files with court through attorney

DOL does not petition court for either party



Who Adjudicates?



Superior Court

fourth level

Board of Review

third level

Higher authority
appeal level

Appeals Hearing Officers second level

Lower authority appeal level

Claims Examiners -Initial decision first level

We Are Committed




- Maintaining the solvency of the State Unemployment Insurance fund.
- Providing temporary support for workers out of work through no fault of their own.
- Communication and education to the employer community
- Being a service provider to you, our customers.

We Provide Many Services:



Including:

- Workforce transition assistance in the event of a lay-off
- Learn from employer seminars about tax issues and benefit questions.
- Learn about trends in the laws that affect your bottom line.



For additional information:

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