

Oregon Unemployment Denial Hearings: Five Steps to Help you Prepare.

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Typical scenario:

You've lost your job and were forced to apply for unemployment benefits. You have received a few weekly checks, are passionately looking for work, and find a letter from the Employment Department in your mailbox. The letter states that an investigation by the department has concluded that you were terminated by your work for misconduct, or that you voluntarily left without good cause and your benefits have been terminated. If you wish to contest the decision, you can do so via a telephone hearing. You appeal the decision and receive your date and time.

Now what?

Step 1. Determine why your employment ended.

Determine exactly how your employment was ended. Did you quit or were you terminated?

If you quit, the burden is on you to prove to the judge that you did so with good cause. If you were terminated, the burden is on the employer to prove to the judge that they fired you due to misconduct and this harmed or disregarded the employer's interest.

Misconduct generally falls into two categories:

- 1) **Willful misconduct**, where you do something intentionally that violates company policy or state/federal law. An example would be where an employee hired as a cashier at a supermarket is caught stealing from a cash register; or
- 2) **Wantonly negligent misconduct**, where you violate company policy or state/federal law without the intent to do so, however the behavior still harmed the employer and therefore warrants termination. An example of wanton negligence might

be where a cashier has been informed of a company policy which dictates specific actions the cashier must take to operate a cash register. If this cashier forgets to take those actions, and causes the employer to lose money from the register, the employee is at fault even though they did not intentionally forget the policy.

Misconduct is generally defended against in two ways:

1) By showing that the employer never informed the employee of a specific policy which the employer alleges was violated. With the cashier example, if the cashier can introduce evidence showing that the employer never informed them of the policy, the employer cannot legitimately claim the cashier violated such policy; or

2) The employee can show the conduct was an ***isolated instance of poor judgment***. In the example above with the cashier who failed to follow company policy, if the cashier knew about the policy, but had an exemplary work record and had never violated it in the past, this might qualify as an act of poor judgment, not misconduct. The cashier will not get their job back, but they could still qualify for unemployment benefits.

If you voluntarily quit your job, you will generally not qualify for unemployment benefits unless you quit for good cause. Good cause means that you quit due to a serious or grave situation that would force a reasonable person to quit their job, and that you had no reasonable alternative but to quit (i.e. the situation could not be fixed in any other way than quitting).

Step 2. Collect evidence that supports your case.

Now is the time to collect as much evidence to support your case as possible. Most people don't know that this telephone hearing is generally the only hearing where you can introduce new evidence. If you fail to introduce evidence at this hearing and you lose, you will likely not have an opportunity to introduce it on appeal.

Ask yourself: Who knows about your employment situation and why you were terminated? Co-workers, friends, or relatives? Will any of them testify for you? Call them and find out. If any of them have testimony that will help your case, they should call in to the telephone hearing with you.

Do you have any documentation regarding your employment history? Try to obtain positive performance reviews, letters, e-mails, or anything that might support your case. If your employer is going to claim you have had a history of behavioral problems, yet your performance reviews state otherwise, this evidence can help.

Step 3. Organize your thoughts.

If you want to have a successful telephone hearing, you must organize your thoughts before presenting your case. Preparation is always the key to winning a hearing. Know exactly what your argument for termination or voluntary leave is. Know exactly which witnesses you are going to call to the stand and which evidence you will present. Practice your opening and closing statements before your first delivery.

Step 4. Prepare your witnesses and evidence for the hearing.

If you have a witness that can support your case, it will be up to you to properly question this witness at the hearing. Don't rely on the judge. Your witness must testify to something that supports the issue of misconduct or voluntary quit. You will need to prepare relevant questions to ask this witness beforehand. This will allow the witness to articulate to the judge why you were not fired for misconduct or you had good cause to leave your employment.

Any evidence or witness lists that you will present at the hearing must be delivered to the court and other parties far in advance. If the judge and other parties do not have a copy of the evidence you wish to present, it may not be admitted.

Step 5. Don't leave anything out, and consult an attorney if you are unsure about how to proceed.

If there is something important that needs to be said at the hearing, make sure you say it. Just like physical evidence, your testimony will only be taken once. This testimony will be recorded and reviewed by the judge, and if you need to appeal the decision, it will be reviewed by the appeals board. You will almost never have an opportunity to testify a second time.

If you are unsure about how to proceed at this point, consult an attorney for further advice. The Employment Department has also provided a helpful guide to administrative hearings at:

http://www.oregon.gov/OAH/docs/UI_Hearing_Info_UIPUB91_0106.pdf

Good Luck.

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