

MEMORANDUM

TO: CLAIM ADJUDICATION MANAGERS & STAFF
FROM: PAUL CONNOLLY, PROGRAM DIRECTOR, UI POLICY & DETERMINATIONS
SUBJECT: M. G. L. CHAPTER 151A, §74
DATE: JUNE 16, 2010

Massachusetts General Law chapter 151A, §74 reads as follows: "*This chapter shall be known and may be cited as the Unemployment Insurance Law, and shall be construed liberally in aid of its purpose, which purpose is to lighten the burden which now falls on the unemployed worker and his family.*"

Section 74 must be considered by a JSR making eligibility determinations. After fact-finding, a JSR must study the information gathered. This includes assessing the credibility of statements and evidence provided by claimants and employers. Once the facts are reviewed in light of the credibility given to the fact provider, a JSR can usually make a determination. In some cases, when the claimant and employer have presented conflicting facts of equal weight that are supported by evidence and are equally credible, a JSR is unable to arrive at a conclusion. In such cases, M. G. L. chapter 151A §74 requires that the claimant's eligibility be approved.

Burden of Proof

For discharge cases M. G. L. chapter 151A, §25(e) places the burden on the employer to prove worker misconduct or rule violation. The employer must show that the claimant was discharged for deliberate misconduct or for violating a known, reasonable, and uniformly enforced rule. The law establishes exceptions to the employee's presumed rights to benefits when there has been misconduct or a rule violation. The employer must provide evidence of the claimant's misconduct or rule violation. That a claimant may make statements that appear false, are not consistent, or claim that unlikely events occurred is not enough to impose a disqualification. The employer must show how the claimant's behavior rose to the level of misconduct or how the claimant violated a rule or policy and that the rule or policy is reasonable, was known to the claimant and has always been enforced.

For cases of voluntary or involuntary leaving the burden is on the claimant to show good cause for leaving. In voluntary-leaving cases, the claimant bears the burden of establishing that the employer's actions, or conditions of employment provided good cause for the claimant to leave work, or that the claimant had to leave work because of urgent circumstances.

Weighing Facts

JSRs encounter direct and indirect statements of fact presented by both employers and claimants as "facts". An individual who witnessed or participated in an event makes a direct statement of fact by recalling the event. An indirect statement of fact ("hearsay") is

made by someone with no direct knowledge of the event who bases their statement on information told to them by someone who was present at the event.

JSRs do not completely discount indirect "hearsay" statements but they must weigh them based on several factors:

- Consistency – Has the person made consistent or conflicting statements about an event? We attach less weight to conflicting statements. We attach more weight to statements that are logically consistent with other statements made by the same person or others.
- Corroboration – When multiple people confirm the same facts or when written evidence supports the facts, they carry more weight.
- Motive: The presence or absence of any motive an individual has for making a statement may subtract or add weight to the statement.

Example:

Facts:

The employer has a contract to transport developmentally challenged individuals to school.

The claimant worked for the employer as a van monitor.

The employer received a call from the school complaining that the claimant pulled one of the children out of his seat on the van.

The employer investigated the incident by speaking to staff at the school and then to the claimant.

The employer states three witnesses at the school said that the claimant forcefully pulled a child off the bus and yelled at him.

The employer could not provide documentation of these witness accounts.

The employer could not provide any more information from or about the witnesses.

The claimant denies pulling the child out of his seat.

The employer fired the claimant for forcefully pulling a client out of his seat to get him out of the van.

The direct statement of fact from the claimant outweighs the indirect, unsupported allegations of the employer's client. The indirect statements of the witnesses although consistent, were not supported by any direct statements or other evidence provided by the employer.

Example:

Facts:

The claimant worked as both restaurant manager and bookkeeper and lived in a residence owned by the owner of the business.

The police execute a search warrant of the claimant's residence. Officers recover fourteen filled and partially filled cases of wine from the residence.

A copy of the police report detailing the results of the search warrant is provided by the employer to the JSR.

The report indicates the claimant stated that the alcohol was "expired" wine that she obtained from the restaurant. The report indicates that at a later point the claimant informed police that a wine company representative gave her the wine. An officer informed the claimant that he would be contacting the wine company representative to verify the information. The report indicates that at this point, the claimant said the owner of the restaurant had given her the wine.

The employer terminates the claimant for alleged theft of wine from the restaurant.

The claimant admits there was wine at her residence that belonged to the owner of the business.

She indicates some came directly from the owner of the business, some from vendors, and some were left at the home after parties the owner had at her residence.

The employer states the claimant admitted she had alcohol belonging to the restaurant.

The claimant denies any theft, violation of policy, or misconduct on her part.

The claimant admits she had wine and liquor belonging to the restaurant at her home.

A police report supports these facts. The report confirms that an officer observed fourteen cases of the restaurant's wine in the claimant's home. The report also indicates that the claimant made several inconsistent statements directly to the officer about how she obtained the wine.

The police report supports the direct and hearsay statements that the claimant took the restaurant's alcohol.

Hearsay evidence can be amply reliable when supported with additional evidence. In this example, the police report identifies the officer who interviewed the claimant at her home. The report documents the alcohol present in the home and several inconsistent, contradictory statements made by the claimant

Language & Communication

JSRs must be aware of differing understandings that may result from flawed interpretation of statements made by those with limited English language ability. Limited English language ability can affect communication between any of the parties involved at any point in time.

JSRs should consider the extent to which the individuals involved might have misunderstood or been misunderstood when either the claimant or employer indicates that such a misunderstanding occurred because of one or the other's limited language ability.

JSRs should take the time to question any information provided through an interpreter if the information does not make sense either in relation to the question asked or in relation to other information provided. There is a risk that a person may not have fully understood the question or that the interpreter or JSR may have misunderstood the reply.

Summary:

Massachusetts General Law chapter 151A, §74, requires a JSR to find in the favor of the claimant whenever he or she is unable to resolve conflicts in the material facts. Section 74 also requires a JSR to find for the claimant whenever he or she finds both parties equally credible and the facts are of equal weight.

Questions:

Please contact me or another member of the staff in UI Policy & Determinations with any questions you may have at 617-626-6422.