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Denying Unemployment Benefits To A Former Employee

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Maryland employers who seek to deny an employee's request for unemployment benefits must first respond to the Department of Labor, Licensing & Regulation (DLLR) Request for Separation Information. A Claims Examiner then reviews all the information and decides if the employee should receive benefits.

The employee or the employer can appeal the initial Claims Examiner decision if either disagrees with it. It used to be that these appeals were conducted at in-person hearings, but increasingly, they are done by telephone. Employers will typically have the Human Resources representative - or other management official who has investigated the circumstances - present during the appeal hearing, but not necessarily the supervisors involved in the decision-making or in other events pertinent to the proceedings.

A recent decision by the Court of Special Appeals in Maryland, following appeals by a former employee, suggests that employers should be more careful how they handle these appeal hearings.

The issue in this case was whether the employee was fired or walked off the job, and the unexplained absence of the supervisor who actually had the final conversation with the employee but did not testify at the appeal hearing, proved fatal to the employer. Although the appeal examiner, the DLLR Board of Review and the Circuit Court had upheld the decision denying benefits, the Court of Special Appeals reversed. It ruled that that the courts, when reviewing DLLR unemployment decisions, must find that there was "competent, material and substantial" evidence to support the findings, which in this case was lacking. Because an employer-created document gave some credence to the employee's version, the court found that the employer's presentation of testimony by a manager as to what the supervisor told him had happened was not sufficient evidence and the disqualification of the employee was overturned. Parham v. Department of Labor, Licensing & Regulation, 189 M.App. 604 (2009) (decided December 30, 2009).

In light of this decision, employers should strongly consider presenting direct testimony by the key supervisor who interacted with the employee or made the decision at any appeal hearing, unless there is a strategic reason not to do so.

