

Representation at My Unemployment Appeal Hearing

September 16, 2014

Every year thousands of people in Massachusetts find themselves in a situation where they have lost their employment. Like most other states, Massachusetts provides the ability to apply for unemployment benefits to assist persons who have lost their job. Eligibility for unemployment benefits can depend on a number of factors.

Many individuals are under the impression that it is the employer who makes the determination whether or not a former employee will receive unemployment benefits. This, however, is not the case. Often times employers will inform their employees they will not “contest” their unemployment request but it is important to realize that the Division of Unemployment Assistance (hereinafter referred to as DUA) has the sole discretion to decide if an individual is qualified to receive unemployment benefits. That decision is made by the DUA based largely off the information the claimant provides on their application and any information provided by the employer. The applicant will usually receive notice on whether their claim was approved or denied within a few weeks.

If a claim is approved, employers are generally provided with the opportunity to appeal that determination and oppose the former employee’s claim for unemployment benefits. On the other hand, if a claim for unemployment benefits is denied the claimant has a short window of 10 days to file an appeal. Once the appeal has been filed, the claimant will be given notice of a DUA hearing to determine if the initial decision should be upheld or reversed. It is important for claimants whose claim for unemployment benefits has been denied to continue to claim their benefits while their appeal is pending. In considering whether a claimant or applicant is eligible for unemployment benefits the DUA considers 6 factors which range from whether you worked in Massachusetts; whether you are physically and mentally able to work, etc. One of the difficult hurdles to prove to the DUA is whether you lost your job “through no fault of your own.”

The DUA will approve or deny a claim for unemployment benefits based on the failure to prove all 6 factors. The general rule is that if you are terminated (fired) from your employment you are eligible for benefits unless the termination falls into one of the two exceptions carved out by the Massachusetts unemployment statute. On the other hand, in situations where a claimant resigned, quit, or otherwise left their job voluntarily, the general rule is that the claimant is only eligible for unemployment benefits if “the claimant left voluntarily with good cause attributable to the employer or its agent;” or if “the claimant’s resignation was involuntary for urgent, compelling and necessitous reasons.” The unemployment appeal decision can be influenced by certain specific facts and failure to articulate those facts may ultimately cause a denial of unemployment benefits. This information is conveyed during the hearings that a claimant may not address during the appeal hearings officer because they are nervous, anxious, intimidated or simply may not know the significance of conveying said information.

There are also many instances where the appeal decision can be influenced by applicable case

law that applies to the specific facts of their appeal. If a claimant is unaware of the applicable case law it is possible that their appeal for unemployment benefits could be denied in situations where it should have been approved. Often times the unemployment appeal process is confusing, stressful, and difficult for claimant's who are unaware of the intricacies of pursuing an appeal regarding unemployment benefits. While a claimant may believe the DUA was wrong in denying a claim for unemployment benefits, proving this is often a daunting task without the assistance of an attorney. This is especially true since many employers will have gone through this process before and likely will have representation in the form of an experienced attorney or company representative. This places an unrepresented claimant at a distinct disadvantage in trying to win an unemployment appeal. Hiring an attorney to represent you for your unemployment appeal is also a wise investment since winning your appeal can provide an important stream of income that will help you to support yourself and your family while you are searching for a new job. For these and other reasons having an experienced attorney who knows the intricacies of the unemployment appeal process can often be the difference between winning or losing your appeal for unemployment benefits.

At Cohen Cleary, P.C. we have extensive experience in successfully appealing claims for unemployment benefits with the DUA. We customize our unemployment appeal strategy based on the applicable law and facts of each case. We also offer affordable legal representation for unemployment appeals through the use of a flat fee billing structure that helps to reduce legal fees for our clients. If you or someone you know is faced with an unemployment appeal, take steps to protect your rights and contact our office for a confidential case evaluation.