



Legal Aid Society of Hawai`i

Unemployment Benefits

Good Cause & Misconduct

This brochure provides definitions and examples of good cause and misconduct situations.

This brochure may be helpful to you if:

- you were denied Unemployment Benefits, OR
- you quit your job for a good reason or you were fired for any reason other than misconduct.

If you quit your job or your boss claims that you quit, go to SECTION 1 of this brochure.

If you were fired from your job, go to SECTION 2 of this brochure.

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SECTION 1: You Quit Your Job

I quit and was denied unemployment benefits

If you quit your job, or your employer claims that you quit your job, you will have to prove that (a) you tried to fix the problem before, *and* (b) you had a good reason to quit.

What is "Good Cause?"

"Good cause" is when there is a real, substantial, or compelling reason for quitting. It is a reason that would cause another employee, who is reasonable and sensible, and who wants to keep his/her job, to take similar action.

"Good cause" DOES NOT mean that you were bored with your job, tired of the work, or that you did not want to work at the time.

Examples of "good cause"

- your working conditions became prejudicial or harmful to your health, safety, or morals.
- the terms of your employment changed from what you and your employer had previously agreed upon. For example, there was a change in your rate of pay, position or grade, duties, days of work, or hours of work.
- discrimination which violated federal or state laws. (If you suspect discrimination, you must file a claim with the Hawaii Civil Rights Commission.)
- a change in your marital or domestic status that causes a change in your lifestyle; for example, your new marriage makes it necessary that you move to another city.
- acceptance of a definite, firm job of another employment where the offer is later withdrawn and the former employer refuses to rehire you.
- mandatory retirement imposed by a collective bargaining agreement.
- any other factor relevant to a determination of "good cause," such as harassment by other co-workers

How do I prove "good cause" to the hearing officer?

To win your appeal, you must prove to the hearing officer that you had good cause to leave your job.

1. Attempts to fix the problem

At the hearing, you will first need to show that you tried to fix the problem before you quit your job. You should show that you talked to your boss or wrote a letter to a supervisor about the problem. If possible, you should bring in proof that you tried to fix the problem. For example, proof would include witnesses who heard the conversation, or a copy of the written letter that you sent to your supervisor.

2. Proof that you quit for a reason

Next, you must show proof that you quit for a reason. In order to prove this you should bring in documentation and witnesses.

Examples of *documentation* include:

- pay stubs that show a change in pay or hours if you quit because of change in pay or hours
- medical records and doctors' letters if you quit because of a medical reason
- any other relevant material evidence

You should also bring in *witnesses* (or notarized statements from witnesses) who can testify about relevant issues on your behalf.

You can subpoena witnesses and documents if you feel s/he will not appear voluntarily. This means that the Appeals office will issue an order that requires the witness to appear at the hearing or the documents to be sent to the office. You can file a request for a subpoena at the Unemployment Appeals Office.

Voluntary separation

If you were denied benefits because of "voluntary separation," this means that the claims examiner decided that you voluntarily left your job without "good cause." To appeal this decision, you must prove to the hearing officer that you left for "good cause."

SECTION 2: You Were Fired

I was fired from my job and denied unemployment benefits.

When you applied for unemployment benefits, a claims examiner reviewed your case and talked to your employer. If your employer said that you were fired for misconduct, the claims examiner denied your application for unemployment benefits. If you disagree with this decision, you must appeal within **10 calendar days** of the notice. Your employer will have to prove your misconduct in order to deny you benefits. To prepare for the hearing you should understand what misconduct is, and how to defend yourself.

What is misconduct?

Misconduct is defined as:

- a willful or wanton disregard of the employer's interests
- a deliberate disregard of the standards of behavior which the employer has a right to expect from an employee
- carelessness or negligence of such a degree as to show wrongful intent or evil design

Misconduct IS NOT:

- mere inefficiency
- unsatisfactory conduct
- poor performance because of inability or incapacity
- isolated incidence of ordinary negligence
- good faith errors in judgement
- **Examples of misconduct:**
- regularly skipping work or showing up late to work
- a fight at work (sometimes even just yelling)
- lying to the employer about something important and related to your job
- a complete disregard of duty
- intentional disregard of employer's orders
- employee insubordination
- stealing employer's property
- use of drugs or alcohol while on the job
- intentionally causing substantial damage to employer's property or equipment

If you were fired for misconduct, you ARE NOT eligible for unemployment benefits. Incidents of misconduct have to be related to your job. It cannot be for something outside of your work.

How To Prepare For Your Hearing:

At your hearing, you have a chance to defend yourself. The way you defend yourself depends on the circumstances of the case, but here are two common defense strategies:

- 1) Deny the misconduct behavior, OR
- 2) Admit the misconduct behavior, but say that it was an isolated incident of negligence, a case of bad judgement, or incompetence. These examples cannot be considered misconduct, by law.

To help your case, you should bring in documentation and witnesses, if possible.

Documentation includes letters or any other related written proof of what you are saying. For example, if the misconduct was for frequent absences and you had a valid reason, such as illness, bringing in medical records and any kind of company policy about valid absences would help your case.

Witnesses (or notarized statements of witnesses) include those who saw the incident and who can testify on your behalf that it was not misconduct.

You can subpoena both witnesses and documents if necessary. See SECTION 1, Part 2 for specific information about subpoenas.

Other situations:

If you feel you have been wrongfully terminated, you may have a direct claim against your former employer. You should seek advice from a private attorney in this case. If you think you've been discriminated against, you have to file a claim with the State Civil Rights Commission & Equal Employment Opportunity Commission within 6 months of the adverse employment action.

Legal Terms

Claims Examiner the person who will review your application for unemployment benefits

Discrimination when someone treats you differently on the basis of sex, race, religion, sexual orientation; for example, a disability

Documentation any written evidence that proves you are telling the truth

Good Cause a reason for doing something that is legally valid

Hearing a legal proceeding where a decision is made based on the evidence and testimony of both parties

Hearing Officer the person at the hearing who will make a decision based on the evidence and testimony of both parties

Misconduct behavior that is purposely not appropriate to a situation

Subpoena a document that is written by the agency which orders a person to show up or a document to be produced at the hearing

Voluntary Separation when a person chooses to leave without good cause

Witness a person who testifies at a hearing and swears his/her testimony is true

Other Brochures

The Legal Aid Society of Hawai'i offers the following related brochures:

- "Unemployment Benefits: How to Apply for Benefits"
- "Unemployment Benefits: What to Expect from the Hearing"
- "Unemployment Benefits: How to Appeal"

Useful Names & Numbers

Legal Aid Society of Hawai'i - <http://www.legalaidhawaii.org>

LEGAL HOTLINE open Monday to Friday 9-11:30am and 1-3:30pm

Oahu call 536-4302 Maui call 242-0724 Kauai: 245-7580 Molokai: 553-3251

Hilo call 934-0678 Kona call 329-8331 Lanai: 565-6089

To file a discrimination claim:

Hawaii Civil Rights Commission
586-8636

Dept of Labor: Unemployment Office

Honolulu Office 586-8970 or 586-8971
830 Punchbowl Street, Room 110

Kaneohe Office 233-3677
45-1141 Kamehameha Hwy

Waipahu Office 675-0030
94-275 Mokuola Street, Room 301

Appeals Office 586-8930
830 Punchbowl Street, Room 429
Honolulu, HI 96813

Hilo Office 933-4461
777 Kilauea Avenue

Kona Office 322-2724
Kealahou

Maui Office 243-5377
Wailuku

Kauai Office 241-3485
3100 Kuhio Hwy, Rm C12