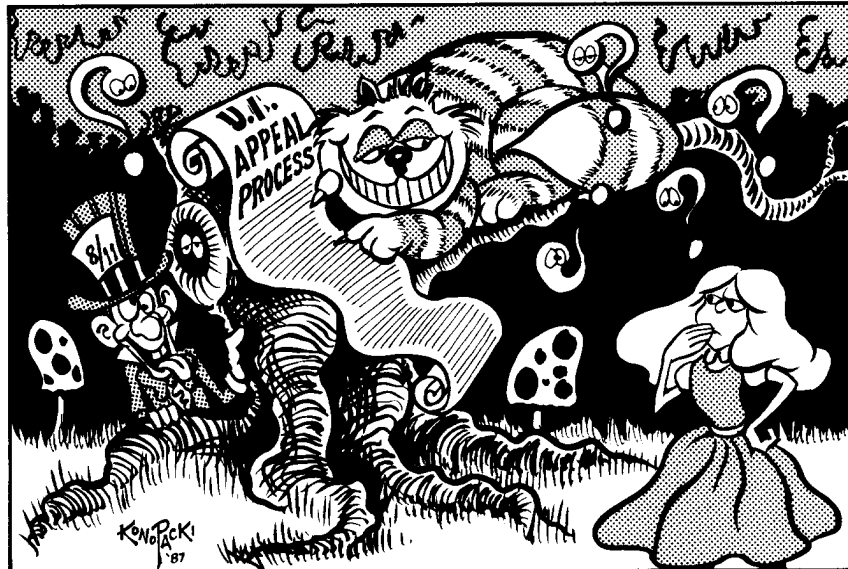


A Worker's Guide To Unemployment Insurance



Prepared by:

The Unemployment Compensation Appeals Clinic, Inc.

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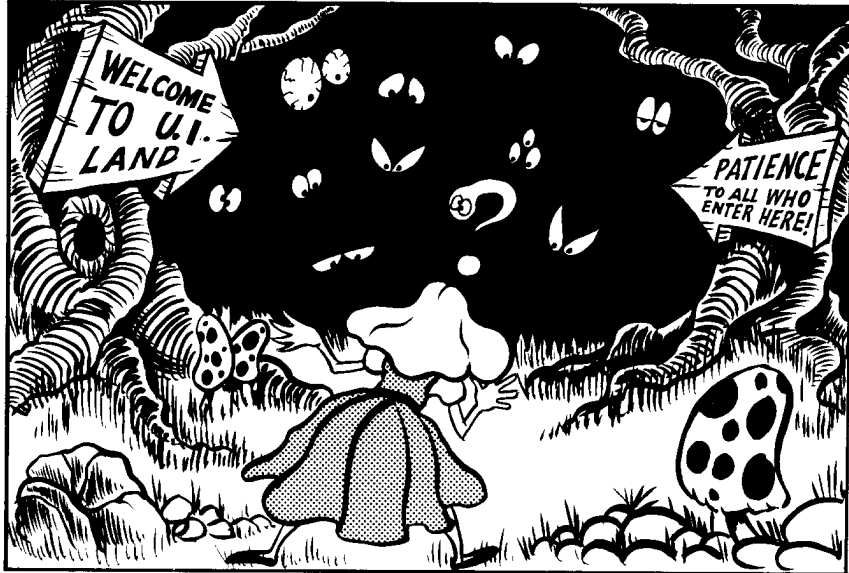
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Before Applying for Benefits: A Few Words of Warning



Have Patience

The Unemployment Insurance Application process can be time consuming. You will have to fill out a few forms and you will likely spend a lot of time waiting.

If You Don't Know - Ask

Don't be afraid to ask for help in filling out these forms. If you do not understand what they are asking for or do not know what you should answer to a question, talk to someone who works at the office. It is far better to ask for help with an answer than to leave the form blank.

Do Not Restrict Your Availability

In order to qualify for unemployment insurance benefits you must be available for full-time, and generally for first shift work. Do not, for example, say that you will not take any work paying less than \$10 per hour. If your previous job paid you \$10 per hour you may be able to turn down jobs paying significantly less than that during your first few weeks of unemployment but after that you will have to take whatever work is offered (with some limitations).

Also, you may be denied benefits if you do not have transportation to get to a job. You need not have your own car but you must have access to some reliable transportation such as a city bus. If you live in a rural area and do not have transportation you may be denied benefits even if you were able to walk to work at your last employer.

You may be considered unavailable if you have full time responsibility for childcare and cannot make other arrangements for the children. For example, if you are only available to work second shift because of child care responsibilities and there are very few second shift jobs in your area, you may be found to be unavailable for work.

Make Sure the Statements the Job Service Deputy Takes Are Accurate

You will be interviewed by telephone by a job service deputy. The deputy will write down what you say and then mail it to you if you ask. Read what was written very carefully. Make sure that it tells your story the way you believe it happened. If something is misleading, make sure that you or the deputy writes a clarification. This statement could hurt you later if it is inaccurate. If your case goes to a hearing, this paper will be part of the record.

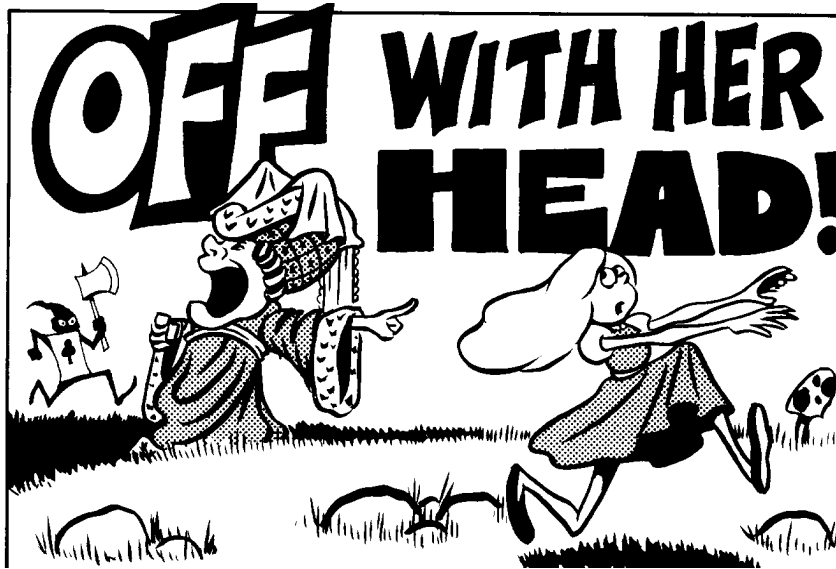
Keep Filing Those Weekly Claims, Folks

You must call in or file on the internet for every week that you are unemployed or partially unemployed. Even if you have been denied benefits but are in the process of appealing that denial, you must keep on calling in.

Keep a Good Record of Your Work Search

Get a little notebook and write down every time you look for or apply for a job. Write down the date, where you looked (newspaper, Job Service Board, Hiring hall, etc.), and where you applied (name and address of employer). If the Unemployment Insurance Division thinks you are not actively looking for work they may cut off or challenge your benefits.

Disqualifications



Once you have gone through the initial intake there are several reasons why you may be disqualified from receiving Unemployment Insurance Benefits. Some of them are based on availability for future employment and some are based on the manner in which your former employment came to an end.

AVAILABILITY ISSUES

Unemployment Insurance is designed to help people who are out of work but who are actively seeking new work. It is not designed to help people who cannot or will not work. Therefore, there are requirements about your availability for new work.

1) General Availability

Generally you are required to be available for full-time, first-shift work, Monday through Friday each week. These requirements may vary slightly if there are a substantial number of jobs in your area that have different requirements or if your particular line of work tends to have different hours. For example, a nurse may be disqualified for benefits if she or he restricts her or his availability to Monday through Friday first-shift work.

Students almost never qualify for benefits if they take any daytime classes. Even if the student promises to drop out if he or she gets a first shift job he or she will likely be found to be unavailable. If the student is taking classes that will not lead to a degree, or that can be transferred to night classes, he or she may have a slim chance of convincing an Unemployment Insurance Division Deputy or Administrative Law Judge that he or she will drop out of school or switch times to accept first shift work.

2) Physical Limitations

The Unemployment Insurance Division makes a distinction between temporary, short-term and long-term unavailability for work. If you are physically unable to do your work for a short term you will be ineligible for benefits as long as the work is available and you are not.

You are not required to be physically able to do any job that might be offered. However, you must be physically able to do at least 15% of the jobs in your labor market. The Department of Workforce Development (DWD) has labor market analysts who determine what an individual's labor market is and what percentage of jobs in that market the person is likely to be available for. Such a person may be called to testify at your hearing.

3) Geographic /Transportation Limitations

You cannot overly restrict the geographic areas in which you are willing to work. Depending on your labor market and the type of work involved, most people can be expected to travel anywhere from 15 to 25 miles each way. Certain jobs, such as construction work, may require up to a 50-mile commute. Usually you will need access to a car or public transportation. Limiting yourself to positions within walking distance will usually disqualify you unless there are a substantial number of jobs within that distance.

4) Restrictions on Wages and Type of Work That Will be Accepted

Claimants should not limit in any way the kinds of jobs or wages that they will accept. It is ok to say you prefer certain jobs, but refusing to accept whole categories of jobs may disqualify you for benefits. It may be found that you are unduly restricting your availability. The exception to this is during your canvassing period, which is discussed below.

5) Availability with "Current" Employer

You will be found to be ineligible for benefits in any week in which you are recalled with due notice to report for work with your current employer and you are unavailable. Your current employer is the employer you most recently worked for before filing your unemployment claim. "Due notice" means notice that is reasonably calculated to inform an employee that there is work available for him or her. A vague comment that maybe there will be some work next week is not due notice.

NEW WORK/JOB OFFERS

1) Canvassing Period

You may have up to six weeks from when you became unemployed in which you can turn down work which is a lower grade of skill or at a significantly lower rate of pay than you had on one or more recent jobs without losing your eligibility for benefits. It is important to note, however, that the law says **up to six weeks**. That means that Unemployment Insurance Division can decide that something less than six weeks was enough. Generally the greater amount of skills you have and the wider the job market, the longer (i.e., closer to six weeks) you will be allowed. During your canvassing period you will be able to turn down jobs that do not pay as well as your old job or require less skill but you may be found ineligible if you turn down a job offer for a position similar to your old job. Jobs paying less than 75% of your old wage are considered to be at a significantly lower rate of pay.

2) Job Service Referrals

If Job Service refers you to a job you **must** apply. Even if you do not think you are capable of doing the job either physically or mentally or you do not think you would like to do it you

still must apply, and you must apply promptly. As far as Job Service is concerned it is up to the employer to determine whether you are qualified for the job, not you! If Job Service has made an actual referral and you fail to apply, you will be disqualified from collecting benefits and the amount of benefits you are able to collect in the future may also be reduced.

3) Job Offers

You may also be disqualified from benefits if you are offered a job and you turn it down. The only exceptions to this rule are if you are still in your canvassing period or if you turn down the job for what Job Service considers "good cause."

The offer itself must meet certain standards before it will be considered a valid offer and jeopardize your benefits:

- A. There must be a clear offer of work. The offer must be something a reasonable person would understand to be an offer of work.
- B. The offer must be sufficiently specific as to type of work, the number of hours, starting date and the rate of pay. If you have previously worked for this employer, however, it may be assumed that you were familiar with some of these things and they may not be required to be specifically stated to find an offer valid.
- C. The offer must be genuine. A former employer cannot make a job offer just to avoid paying your unemployment compensation.
- D. The work offer cannot be in violation of a union contract.

4) Good Cause for Refusal of a Job Offer

Under some circumstances you may be able to turn down a job offer for good cause without losing your benefits.

- A. **Canvassing Period** as previously mentioned, if you have only been unemployed for six weeks or less, you may be allowed to turn down a job at a significantly lower rate of pay than you earned or requiring a lesser degree of skill than you used on one or more recent jobs.
- B. **Protection of Labor Standards** You may turn down a job if
 1. The position is vacant due directly to a strike or lockout; or
 2. If the wages, hours, or conditions of the work offered are substantially less favorable to you than those prevailing for similar work in the locality. (This does not mean you can turn down either work on a shift you prefer not to work or part-time work). For example, if the average wage for certified electricians in your area is \$15/hour you would not be required to take a job as a certified electrician at \$7/hour.
 3. If as a condition of employment you were required to join a company union or were required to resign from or refrain from joining a labor organization (union).

5) Other Good Cause

Distance to work or travel time is excessive - if the distance between your home and the job site is excessive you may not be required to take the job. Usually excessiveness is

determined on a case-by-case basis and it is compared with the distance other people in your locality doing similar work travel to their jobs.

QUITTING

Generally if you quit your job you cannot collect unemployment insurance benefits. A quit or voluntary termination is defined for Unemployment purposes as when an employee shows that he or she intends to leave his or her employment and indicates such intention by word (e.g. saying you quit) or manner of action inconsistent with the continuation of the employment relationship (e.g. absences without notice).

Whether you voluntarily quit or were discharged may determine whether or not you are eligible for benefits. If the situation is unclear at the time your employment ends it is up to you the employee to clarify it. Is the employer intending to fire you or did you just quit because you were mad?

1) Constructive Quit

If you do things that are "inconsistent with continuing the employment relationship" you may be found to have quit even though you never actually said that you were quitting. For example, if you are absent without notice you may be found to have quit. If you are in jail and do not notify your employer you will be considered to have quit. Or if you refuse a reasonable transfer you may be found to have quit.

You may also be considered to have quit if you fail to meet a job requirement. For example, if your job requires that you have a certain type of license and that license is suspended, revoked or non-renewed due to your own fault, you will be disqualified from collecting benefits.

2) Quit for Good Cause

You may be eligible for benefits if you can establish that you quit for good cause. Good cause requires that there be some fault on the part of the employer. Thus if you quit for personal reasons, no matter how valid they are, you will not be eligible for benefits. For example if you quit your job to stay home and take care of a family member you cannot collect U.I. Similarly, if you quit your job to follow your spouse to a new location you cannot collect benefits.

Quitting for good cause attributable to the employer requires that there be no reasonable alternatives. You are usually required to show that you informed your employer of the problem and the employer made no attempt to remedy it. (This would not be necessary in the case where the employer wanted you to do something illegal).

- A. **Employer's Illegal Acts** You will be found to have quit for good cause if you quit because your employer wanted you to do something illegal. For example, if your employer wanted you to commit fraud or if your employer demanded that you work in violation of the wage and hour laws, you will be found to have quit for good cause.
- B. **Sexual Harassment** If you quit because your employer made employment, compensation, promotion, or job assignments contingent upon your consent to sexual contact or intercourse, you will be eligible for benefits.

- C. **Unilateral, Material Changes in Terms or Conditions of Employment by Employer** If your employer cuts your pay by one-third or more you have good cause to quit. You may also have good cause to quit if your pay cut is less than one-third and there are other changes in your employment such as a demotion.
- D. **Personal or Family Health** You may be able to quit for good cause if you are physically unable to do your job or if you have to take care of a sick family member. But there are two important restrictions on this that you must meet in order to qualify for benefits:
1. You must explore all reasonable alternatives before quitting. Perhaps there is some other less strenuous job you can do for the employer or other accommodations can be made. You **must** inform your employer of the problem and give the employer an opportunity to accommodate you **before** you quit.
 2. Even if you meet the above requirements you still have to be generally available for work. See page 7. You must be physically able to do at least 15% of the jobs in your labor market. You can quit for good cause if your employer moves to a new location or if you are transferred to a job site that is an unreasonable commuting distance. The same is not true if you are the one who moves. If you move away from your current employer you are not eligible for benefits if you quit because of that move.
- E. **Compulsory Retirement** You are eligible for benefits if you are forced to quit because you reached the compulsory retirement age of your employer.
- F. **Quit to Take a New Job** You can quit to take another job provided you work at least four weeks in the new job subsequent to the week in which you quit. And the new job must offer at least one of the following:
1. The average weekly wage in the new job is greater than or equal to the average in the old job.
 2. The new job offers the same or a greater number of hours of work than the old job.
 3. The new job offers the opportunity for significantly longer-term employment.
 4. The new job offers the opportunity for significantly closer to your home than the old job.

DISCHARGE

Unless you work under a collective bargaining agreement an employer has the right to fire you for any reason or no reason (with a few exceptions such as sex or race discrimination or union activities). If you are discharged you are eligible to collect unemployment insurance unless you are fired for misconduct.

1) Labor Dispute

The law in this area is very complicated but generally if you are out of work because of a strike you are not eligible for benefits. However, if you are on strike and your employer fires you, you may become eligible for benefits as long as you are not fired for misconduct such as strike violence. If you are laid off because of a strike against another employer, you may be eligible for benefits. Again there are exceptions to this and it is best to talk to your union representative.

2) Misconduct

The term "misconduct" has a special meaning in unemployment insurance cases. To constitute misconduct an act must be intentional as opposed to an honest mistake or a genuine inability to do the job despite one's best efforts.

Throwing a monkey wrench into the work is misconduct. Accidentally dropping a monkey wrench into the works may cost you your job just the same, but it is not misconduct and will not cost you your unemployment insurance benefits.

For unemployment insurance purposes "misconduct" is defined as "conduct showing such willful or wanton disregard of an employer's interests as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of his employee or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests." Misconduct is not "mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertence or ordinary negligence in isolated instances, or good faith errors in judgement or discretion."

- A. **Criminal Acts** Misconduct can mean criminal acts but it clearly does not have to and sometimes criminal acts do not mean misconduct. It has to be misconduct connected with your employment. For example, if you steal something from the employer or a co-worker that act is misconduct connected with your employment. If you get caught shoplifting elsewhere it is not connected with your employment unless your arrest or incarceration prevents you from going to work.
- B. **Off-Duty Conduct** Generally your off-duty conduct is none of the employer's business unless it affects your work. If you get in a fight with a co-worker outside of work or you come to work hung over, your off-duty behavior could affect the employer and may therefore be misconduct. It is not necessarily misconduct, to have your wages garnished.
- C. **Absenteeism/ Tardiness** Many people are surprised to discover that excessive absenteeism or tardiness can be considered misconduct. If you are absent for valid reasons and with proper notice it is not misconduct even if it is frequent enough to warrant your discharge. However, if you are absent or late without proper notice to the employer it may be found to be misconduct. "Proper notice" usually means the notice that the employer requires. You may be able to defend against a misconduct charge in this area if you can show that you gave proper notice or if you can show that your employer condoned the behavior for a long time without complaint or warning or if the employer tolerates similar absenteeism or tardiness in other employees.

D. **Work Rules/insubordination** You may be found to be guilty of misconduct if you do not follow the employer's work rules. This can include a variety of things:

1. Failing to follow required safety procedures thus endangering yourself or others
2. Fighting with or harassment of co-workers
3. On-the-job horseplay
4. Using abusive or profane language
5. Altering time cards
6. Refusal to follow directions
7. Stealing or lying

2) Defenses To A Misconduct Charge

A. **Single Isolated Incident** - If overall you have a good work record and only messed up this once, it may not be misconduct. This depends on the seriousness of the offense. If it was a relatively minor lapse in good behavior, this may not be misconduct. But if the incident was especially bad or if you have had other problems in the past there might be misconduct.

B. **Employer's Condonation** - If the employer knew about and tolerated this behavior in the past your behavior may not have been "misconduct". However, an employer can begin enforcing a rule, which he or she previously ignored if he or she makes it known that the rule will now be enforced. If you have fair warning, your behavior may have been "misconduct" even if you are the first victim of the new enforcement.

C. **Employer Fails To Follow Its Own Procedure** - If you have a contract or an employee handbook, which sets out disciplinary procedure such as

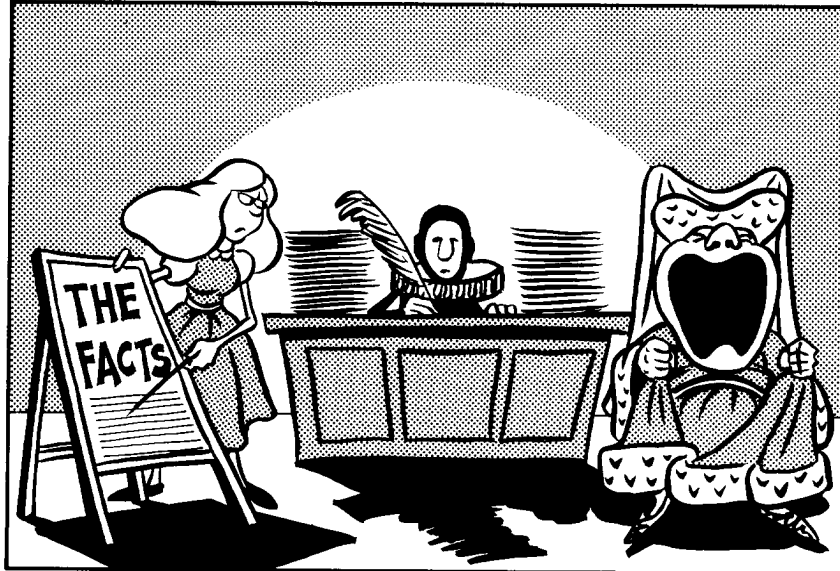
- 1st step - oral warning
- 2nd step - written reprimand
- 3rd step - suspension
- 4th step – discharge

and the employer fails to follow it, you may not be found guilty of misconduct. For example, if under the above procedure you were fired after only an oral warning you may have a defense. Remember, this will only work if the employer has an established disciplinary procedure that he or she failed to follow.

D. **Job Performance** - If you are fired from a job because you are inefficient or incapable of doing the job, that is not misconduct. Misconduct requires "an intent to do something inconsistent with the employer's interests". The standard for misconduct says "mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity,

inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not deemed to be misconduct."

Appeal Procedure



PRELIMINARY STEPS

Follow These Procedures If

- A) The initial determination was against you and you have appealed by letter to Unemployment Insurance Division. (The local office has a form you can fill out to request a hearing).
- B) The initial determination was in your favor and you receive notice that your employer has appealed.

You need to begin preparing for your hearing right away. There are several steps necessary for adequate preparation:

1) Get Your Job Service File

Get a copy of your file from the Unemployment Insurance Division Office. Unemployment Insurance Division is required by law to provide you copies of the materials in your file. To obtain copies of the information in your file, call or stop by your local Unemployment Insurance Division Office, located at 1801 Aberg Avenue (608) 242-4819 for the Madison Area, or you can call toll free 1-800-494-4944 from anywhere in the state. Explain that you would like copies of everything in your file. They will mail copies to you at the address in your file so be sure that address is current.

After you have a copy of the papers in your file, read them over carefully. Some of them you will have seen before. Others, such as the employer's statement may be new to you. Read

the employer's statement carefully. This will give you an idea of what the employer is claiming and will help you prepare your case.

2) Get Your Employee File

Most employers keep files on each of their employees. This file often contains things that may be important in an unemployment compensation hearing, such as

- A. Letters of reprimand or written notes about oral warnings
- B. Letters praising you for your performance
- C. Job evaluations
- D. Records of raises, promotions or demotions

You have a right to see your employee file. Wisconsin Statutes section 103.13 requires an employer to let you see your personnel file. If your employer will not give you copies of the things in your file write down what is in your file and what it says. If there is something in your file that you feel is very important to proving your side of the case and the employer refuses to give you a copy, you may need to get a subpoena for documents. This will require the employer to bring the file to the hearing. For more information on this read the section on getting a subpoena.

3) Get Your Medical Records

If it appears that your physical condition is relevant to the case Unemployment Insurance Division will, generally, send you a form for your doctor to fill out. Your physical condition is relevant to your case if there is a question about your physical ability to work, or if you quit or were fired from your job because of a physical condition.

If you receive one of these forms or if you believe your physical condition is important to your case make sure your doctor fills one of these out. If you did not receive such a form but believe it is important to your case obtain a form from Unemployment Insurance Division. It is better to have your doctor fill out one of these forms than to just have him write a letter on your behalf. Take the form to your doctor's office and wait while he or she fills it out. If your doctor won't do this, MAKE SURE your doctor knows when you need the form back, how /important it is that he/she fills out the form, and that the form is for Unemployment Insurance and that it is to your benefit to be able to do at least some work. If you mail it to your doctor the chances are you will not get it back in time for your hearing. Make sure your doctor, not you, fills it out and signs it. Bring the completed form to the hearing with you.

4) Plan Your Case

Sit down with a pen and paper and think about your case. What points do you want to make? What is the employer likely to say? Be careful not to let your emotions control you. Administrative Law Judges are concerned with the facts. Their job is to apply the law to the facts. They must follow the law which does not always mean they reach a result that you think is fair. They do not want to hear about how much you need the money or how much you deserve it because of all the taxes you have paid over the years. You only get unemployment benefits if you meet certain requirements. It is not an automatic benefit.

Think about the points you want to make that have to do with the "issue" in your case. Jot down things you think are important but do not write them out word for word. Writing it out will only confuse you later if you try to memorize your answers and it may give the impression that you are saying what you think you should say regardless of what the truth is.

The Administrative Law Judge does not want and is not likely to accept a written report of your side of the story. The Administrative Law Judge must rely on what is testified to during the hearing. This means you must also decide if you need to bring any witnesses to the hearing. Witnesses must appear in person. It is not acceptable to bring in a written statement from a witness instead of the witness. The only exception to this is the written report from your doctor.

5) Who is a witness?

Witnesses should be people who have first-hand knowledge of the events. This means people who were actually there and saw and heard what happened. A witness is NOT someone that you told all about it later. Family members should not be brought in as witnesses unless they were actually present at the particular event. In fact, it is probably not a good idea to bring any of your family members along to the hearing with you as this tends to create a more emotionally charged atmosphere and often leads to counterproductive disruptions.

When deciding whether or not you want to call a witness, make sure the person's testimony will help your case. This does not mean telling the person what to say. It does mean talking to the person and finding out if he/she remembers the same things that you do. **Do not bring character witnesses.** A character witness is someone who testifies about your reputation. The Administrative Law Judge presumes you are a good person and they do not want to hear about your fine reputation in the community.

6) What witnesses do you need to subpoena?

A subpoena is a legal document issued by Unemployment Insurance Division or the Hearing Office that requires a person to appear at a hearing. Unless the person you want to testify is your best friend and you are absolutely certain that he or she will show up at the hearing you will want to subpoena this person. Even if your witness is a good friend, you will want to subpoena him or her if one of the following applies:

- A. The person still works for the employer. If there is a subpoena it is easier for the witness to say that they had to appear at the hearing and they had to testify to what happened. (It is against the law for an employer to discipline or fire an employee for testifying and being subpoenaed helps protect your friend).
- B. The person has to take time off from work to attend the hearing. Most employers want to see a subpoena before they let an employee take time off work.
- C. The person is reluctant to testify. A subpoena will ensure that he/she does not back out at the last minute.

7) How to get a subpoena.

As soon as you are notified of your hearing date you should ask for a subpoena for each witness. You can get a subpoena by contacting either the Administrative Law Judge or the Unemployment Insurance Division Office.

- A. In Madison or Milwaukee the best person to contact is the Office Manager at the Hearing Office. This should be done at the very latest at least three days before the hearing. The office manager will want to know the name of the witness, the witness's address if you know it and briefly what the witness is going to testify about. The office manager can refuse to issue a subpoena if she thinks the person's testimony will not be relevant to your case. However, this rarely happens.

- B. You are responsible for picking up the subpoena(s) and delivering it to the witness. You must either give it to the witness in person or leave it at the witness's house with an adult (someone 14 years old or older).
- C. Along with the subpoena you must give the witness a \$16 witness fee plus 20 cents a mile for each mile to and from the hearing office. Preferably, this money should be in cash (but get a receipt).
- D. Make sure the witness gets the subpoena and the fee as far in advance of the hearing as possible. It should never be served (delivered) less than 24 hours before the hearing.
- E. There is a provision in the Unemployment Insurance Law which allows you to be reimbursed by the state for the money you spend on witness fees. However, in order to get this money back, you have to ask the Administrative Law Judge for reimbursement right after the hearing is over. The Administrative Law Judge has a choice to reimburse you or not. If the witness you subpoenaed is not called to testify or if the testimony was not useful to the case, the Administrative Law Judge may refuse to allow reimbursement. If the Administrative Law Judge agrees to reimbursement, he or she will fill out a form and have you sign it. This form has to be processed and you will receive the check for reimbursement in about 3 or 4 weeks after the hearing. In order to make it more likely to remember to ask for reimbursement for the money you paid for fees and mileage put it in writing, and give it to the Administrative Law Judge after the hearing.

8) Preparing Exhibits

If there are any written documents you want to show at the hearing, you should organize them ahead of time. This may include such things as:

- A. Employee handbook
- B. Written evaluations
- C. Other documents from your employee file
- D. Medical reports
- E. Copy of your work schedule

When in doubt about whether something will be helpful bring it to the hearing with you. A document's importance may become more apparent to you as the hearing proceeds. It is important that you take everything with you to the hearing. The Administrative Law Judge will not wait for you to send it to him/her later.

Once you have collected the documents you think are important, stop and consider why each one is important. How does it fit in to what you want to show? It is a good idea to jot a little note at the top of the exhibit or perhaps on a paper attached to it to remind you why it is important. When you get to the hearing spread your exhibits out in front of you so you remember them and can remember what part of the case they are meant to back up.

For courtesy sake, you should make extra copies of the exhibits for the opposing side and for yourself Give the Administrative Law Judge the original if possible. (See more about offering exhibits later, p. 20).

9) Subpoena Duces Tecum/Subpoena To Get Documents

If the employer refuses to give you a copy of your personnel file, or perhaps an employee handbook, or any other document that the employer has that is important to your case, you can subpoena it. This means you will have to go through the same procedures as you do to get a subpoena for a witness (see previous section, p. 16) including paying the witness and mileage fees. This will require the employer to bring the document to the hearing. Usually the employer will give you the document before the hearing starts. If he refuses or you need more time to look it over, ask the Administrative Law Judge at the beginning of the hearing to order the employer to give you the document and ask the Administrative Law Judge for five minutes (or less if it's only a one page document) to look it over. The Administrative Law Judge should give you the time, but he/she does not have to.

PREPARATION BEFORE THE HEARING

Once you have gathered the written documents and figured out who, if anyone beside yourself, is going to testify for you, you have to decide how you are going to present this information. At hearings, information is gathered through a question and answer format. The Administrative Law Judge, or the employer's representative, or you will ask a question and the witness will respond. Before the hearing you should think about what questions you want to ask of the employer and of your witnesses, and what you want to say yourself, to bring out the information you want to show. You should also think about what questions the employer is likely to ask of you and your witnesses. It may be useful to write out the questions you want to ask or write down key words or phrases that help you remember the points you want to make.

1) Preparing For Direct Examination

Direct examination is that part of the hearing where you will be asking questions of your own witnesses. These questions should be straightforward and should not suggest an answer. However, you should not ask a question at the hearing without being reasonably sure what the answer is going to be. If you ask questions without knowing how the witness is going to respond you may hurt your case more than if you never asked the question.

Some examples of direct questions:

Example 1: Were you there when the supervisor talked to me after lunch?

Example 2: Did you take the phone call when I called in to say I was going to be late? What did I tell you?

2) Preparing For Testifying Yourself

When you testify obviously you cannot ask yourself questions. The Administrative Law Judge will ask you most of the questions. Then the Administrative Law Judge will offer you a chance to add anything you think is important. Then the employer's representative will have a chance to ask questions. After they are both done the Administrative Law Judge will ask you if there is anything else you would like to add. This is your opportunity to get in any testimony that you think is important and has not already been covered. Take your time and try not to leave anything out. Check your notes and make sure you have said everything that was on the list you prepared.

3) Cross-Examination

After direct examination of a witness, cross-examination is allowed. This is the other side's chance to ask questions of that witness. In your case you will cross-examine the employer's representative and any of the employer's witnesses. You and your witnesses will be subject

to cross-examination by the employer's representative. You do not have to cross-examine a witness. If the witness's testimony has not done your case any harm or if you think asking the witness more questions will only result in greater damage to your case do not ask. If on the other hand, the witness left something out that tends to make your position look better or if he or she misstates a fact, then you will want to cross-examine the witness.

During cross-examination you should always ask leading questions. Leading questions suggest an answer. They usually result in a yes or no answer. The easiest way to ask them is to put the words you want in the witness' mouth.

Example 1: Isn't it true that you told me that if I didn't quit you would fire me?

Example 2: Other employees often did the same thing I did but you never yelled at them for it, did you?

4) Practice With Your Witnesses

Practice with your witnesses with a rough draft of the exact questions you will ask each witness, making sure your questions will result in their saying everything you want them to say. As you ask these questions at the hearing check them off so you can make sure you have covered everything. Meet with and question all your own witnesses before the hearing to practice. Treat this as if it were the hearing itself. The point is not to sound like you have rehearsed, but to know what you can expect from your witnesses.

After you have practiced you may want to add some questions, remove some questions you had planned, or just change your questions so that they help your witnesses say everything you hope they will say.

5) Instructions For Witnesses

- A. Tell the truth. Do not exaggerate.
- B. Speak slowly and carefully. Do not nod your head; the Administrative Law Judge's tape recorder does not pick up a nod.
- C. Listen carefully to the question that was asked and answer only the question asked. Nothing irritates The Administrative Law Judge more than people who want to tell their whole story when asked what their name is.
- D. Never volunteer any information. Wait until the question is asked, answer it and stop. If you can answer "yes" or "no" do so and stop.
- E. If you do not understand the question being asked say so. The person asking the question will try to ask it in another way.
- F. Do not argue with the person asking you questions.
- G. If you do not know the answer to a question say so. If you do not remember a detail, say so. However, do not use these as excuses to avoid testimony that is unfavorable to you. It will soon become apparent that you are lying and you will have done your case more damage than if you had told the truth in the first place.

6) The Day Of The Hearing

- A. Make sure you have all your exhibits with you. You cannot offer to send something in later after the hearing.
- B. Bring along a pen and paper. This way you can jot down things that you think of while someone else is testifying. Perhaps they will say something that you will later need to clarify or put in a more favorable light. Do not get too carried away with writing things down, however, because you may miss some important testimony.
- C. Dress neatly and conservatively. The best idea is to dress as if you were going to a job interview.

THE HEARING ITSELF

1) Where

Hearings are held at the hearing offices in Madison and Milwaukee. In other parts of the state they are held in Unemployment Insurance Division offices, or other public buildings. Usually the Administrative Law Judge sits at a desk and the employer and claimant each sit at separate tables. The Administrative Law Judge tape records the hearing. He/she will also take notes throughout.

2) The Start of the Hearing

The Administrative Law Judge will start the hearing by finding out who everyone is. Then he/she will try to clarify the "issue". He/She will ask each party what his or her contention is. This usually refers to the "Issue" that was stated on your hearing notice. Your contention may be, for example, "I quit for good cause because..." or "I was discharged but I was not guilty of misconduct." If the employer attempts to change the issue from what you understood it to be, bring this to the Administrative Law Judges' attention immediately. If the issues are similar, the Administrative Law Judge is likely to proceed with the hearing. In the extreme case the Administrative Law Judge may postpone the hearing to allow you time to prepare your case.

3) Order of Questioning

Who goes first? You or the Employer? Generally, the party with the "burden of proof" testifies first. In oversimplified terms this means if you were discharged or laid off the employer has the "burden" of showing why you should not be eligible and will go first. If you quit you have the "burden" of showing good cause for your quitting. However, some Administrative Law Judges do not seem particularly concerned about an order based on burden and always take the employer's testimony first.

4) The Questioning of Witnesses

Usually the Administrative Law Judges themselves will do most of the questioning. After swearing in a witness the Administrative Law Judge will ask basic questions about the person's name, job position and familiarity with the events to be discussed. The Administrative Law Judge will ask whatever questions he/she feels are necessary. Then the representative of the party whose witness is testifying has an opportunity to ask questions (direct examination). After that the opposing party has an opportunity to ask questions (cross-examination). After all the questioning of a particular witness is done, that side will call its next witness. When one side has called all its witnesses that side is done presenting its case. Then the other side will begin presenting its case and the same process is again followed.

5) Introducing Exhibits And Evidence

Exhibits are usually documents, photos, models, or other objects accepted for consideration by the Administrative Law Judge. The process of having the exhibit identified and accepted for consideration in the decision is called "introducing the exhibit into evidence."

The four basic steps in introducing an exhibit into evidence can be outlined as follows:

- A. **Marking Exhibits for Identification** First, hand the exhibit to the Administrative Law Judge. Ask him/her to mark it for identification. He/She will probably mark it with a number. This number will be used to identify the exhibit from then on. The number is a shorthand way of referring to the exhibit without describing what it is.
- B. **Showing the Evidence** Show a copy of the exhibit to the employer's representative and give the original to the Administrative Law Judge. Keep a copy for yourself. If you do not have the original it is okay to give the Administrative Law Judge a copy. The employer must follow this rule if he/she introduces exhibits. If the employer does not have a copy for you ask the Administrative Law Judge to have one made for you at the end of the hearing.
- C. **Laying the Foundation** The heart of the process of introducing exhibits into evidence is producing the testimony of a witness capable of explaining from his or her own direct personal knowledge what the exhibit is. After the Administrative Law Judge has marked the exhibit for identification hand it to the witness. Ask the witnesses to explain what it is and how he/she knows that it is what it is. If there is some part of the document that is very important you may want to ask the witness to read it out loud or tell in his or her own words what it says. Unless it is a very short document, a paragraph or two, do not ask the witness to read the whole thing aloud, because the Administrative Law Judge probably will not allow it in the interest of saving time.
- D. **Making a motion to have the exhibit received into evidence.** A motion is simply a request. Ask the Administrative Law Judge to allow the exhibit to be received into evidence. You can do this after each exhibit has been dealt with in the testimony or you can wait until the witness is done testifying and then ask that all exhibits discussed during that person's testimony be accepted into evidence. If you forget to do this while the witness is still on the stand you should ask it after you have presented your side of the case.

6) Objections

Sometimes the rules of evidence require that certain testimony or exhibits be excluded. The usual reasons for leaving evidence out are either a) that it is not trustworthy or b) it is not relevant to the issue in the case. This evidence can only be kept out if one party objects to it being entered by the other party. During the course of your hearing you may want to object to the questions being asked by the other side, or to the testimony that is being given or to the exhibits the other side is offering. Only do this if the testimony or exhibit is objectionable, the employer's representative may make these objections to your evidence too. Never object to an Administrative Law Judge's question.

- A. **What is Objectionable?** There are three main reasons you are likely to object to evidence: relevancy, leading question, and hearsay. (There are several other more technical objections, which are not covered in these materials. If one of these other objections is present the Administrative Law Judge is likely to exclude the evidence of her own initiative). If you do not understand such an action ask the Administrative Law Judge to briefly explain.

B. **Relevancy** You may object on the grounds of relevancy to questions, exhibits or testimony that does not relate to the issue at hand, in other words information that is not relevant. Relevant evidence is evidence that has a tendency to make the existence of any fact that is important to the determination of the case more probable or less probable than it would be without the evidence. More simply, does the evidence add or subtract from an understanding of the events in question? Examples of testimony that are irrelevant:

1. The issue in your case is "discharged for misconduct" and the witness testifies that three weeks previous to your being fired you talked about quitting.
2. The issue in your case is "refusal of a bona fide job offer" and the witness is testifying about you having called in sick three days in a row, at your previous employment.

However, if the issue in example one was whether you quit or were fired the testimony may be relevant. Similarly in example two if the issue was whether you were physically unable to do your work the testimony might be relevant.

C. **Leading Questions** The only leading questions you are going to be objecting to are those asked by the employer's representative. The only time a leading question will be objectionable is when the employer's representative is questioning his or her own witness. It is not objectionable for him or her to ask leading questions of you or your witnesses. As mentioned earlier a leading question is one that suggests an answer that is desired by the questioner. One way to look at it is that the person doing the questioning is providing most of the testimony and is only asking the witness to say yes or no. Leading questions often end in "isn't that true?" or "didn't you?" Example: You told the supervisor that you refused to do that job and you didn't care if he fired you, didn't you?"

D. **Hearsay** One of the most complicated objections to evidence is also one of the most common: hearsay. Evidence is objectionable on the grounds of hearsay if the person testifying had no firsthand knowledge of the events about which he or she is testifying. For instance it's hearsay if the witness testified about a conversation or event which the witness was not a party to but only found about from someone else. Written statements made out of the hearing and offered in the hearing without the presence of the person who wrote them are also hearsay. Example: If the employer brings a statement written by your former supervisor, but the supervisor is not at the hearing, then that is hearsay.

The difficulties with objecting on the grounds of hearsay at an unemployment compensation hearing are twofold. First there are many exceptions to the hearsay rule. Second, hearsay evidence can be let in at administrative hearings although the Administrative Law Judge cannot base his or her findings on hearsay evidence alone. Examples of objectionable hearsay:

1. "After he fired the employee the boss told me that the employee said "Go to hell!" but I never heard the employee say that."
2. Documents from the personnel file that were not made at the same time as the incidents they are about; i.e., lists of the employee's faults or mistakes made after the fact from memory especially for the hearing.

Do object to hearsay if you feel you should. If you're wrong, or if an exception applies, the Administrative Law Judge will say so.

- E. **When To Object** Do not object too often. (You may not need to object during your hearing at all). As mentioned earlier you will only object when the employer's representative is asking questions or attempting to enter exhibits. You should limit your objections to things that are objectionable and are likely to hurt your case. For example, you may want to object to irrelevant testimony that damages your character, but not object to irrelevant testimony about what the witness had for breakfast. It slows the hearing down and the Administrative Law Judge will not like the interruptions especially if there are no grounds for objection.
- F. **How To Object** If the employer's representative is asking a question you think is objectionable you should say "Objection" before the witness answers the question. If you object to an exhibit, object when the employer is attempting to have the exhibit entered in the record. If you object to the witness' testimony you can interrupt the witness by saying you object. The Administrative Law Judge will probably ask you on what grounds you are objecting. Tell the Administrative Law Judge why and the Administrative Law Judge will decide whether to sustain the objection (agree with you) or overrule the objection (the other party can proceed with what they were doing).
- G. **If The Other Side Objects To Something You Or Your Witness Says** If the other side makes an objection to what your witness is saying on grounds that it is irrelevant make an "offer of proof" An "offer of proof" means you tell the Administrative Law Judge what the witness is going to say and why that is relevant.

If the other side objects to you asking a leading question there is no need to make an offer of proof. It is up to the Administrative Law Judge to decide whether a question is leading or not. If the Administrative Law Judge finds that your question is leading, she may ask you to rephrase it. Then you should ask the same question in a more neutral way. The Administrative Law Judge often will help you phrase your question if you are having trouble. If the other side objects to your questions or your witness's testimony on the grounds that it is hearsay, stop and wait for the Administrative Law Judge to rule. The Administrative Law Judge will decide whether the hearsay fits one of the exceptions to the hearsay rule or whether he/she will allow the testimony for what it is worth.

THE END OF THE HEARING

After both sides have presented all their evidence the Administrative Law Judge will usually ask each of you in turn if you have anything else to add. This is a good time for you to sum up your position in a minute or two at most. It is also the time to make sure that you have asked that your exhibits be admitted into evidence. The Administrative Law Judge will then close the hearing. He/She will turn off the tape and you will be free to go. Remember to submit your request for subpoena reimbursement at this time.

The Administrative Law Judge does not issue a decision at the end of the hearing. Usually within a week to ten days you will get the decision in the mail. If you have not received the decision after ten days call the hearing office and ask if the decision has been issued.

When you get the decision read it carefully. It will tell you whether or not you are entitled to collect benefits. If you are denied benefits you should consider whether or not you want to appeal this decision. Did the Administrative Law Judge get some of the important facts wrong? If so, you may want to appeal. Did the Administrative Law Judge decide that the employer's witnesses were more believable than yours? If so, this is credibility finding and you are not likely to win on appeal. If you wish to appeal this decision you must do so within 21 days of the day the decision was mailed (not 21 days from when you received it). You will file an appeal with the Labor and Industry Review Commission (LIRC), Unemployment Insurance Division, or the Hearing Office can provide you with an appeal form but a form is not necessary. You can appeal by letter. If you do decide to appeal be aware that it usually takes several months before the Labor and Industry Review Commission issues its decision.

TELEPHONE HEARINGS

Telephone hearings are a different animal. They require extra preparation in advance. If it is the employer who will be there by phone then you can prepare as described elsewhere in this booklet with the exception of subpoenas for documents. You will have to subpoena documents as far in advance as possible so the employer can send them to the hearing office. And if you have documents you want to submit you must submit them in advance so the employer has a copy by the time a hearing is held. If you are going to be the one on the phone you have to follow several pre-hearing steps.

- 1) Prepare any exhibits you want entered ahead of time and send them to the hearing office so that they will have them in time for the hearing.
- 2) Make sure the hearing office has the correct phone number where you can be reached at the scheduled time. Do not assume that it is somewhere in your file and that they will find it.
- 3) Have a quiet place where you can take the phone call for the hearing. It is difficult to hear what is going on and you do not want to be interrupted. Try to make sure you will not be interrupted by children or barking dogs and that the radio and television are turned off so you can hear well.

FURTHER APPEALS

If the Appeal Tribunal decision is unfavorable to you, you may want to petition the Labor and Industry Review Commission (LIRC) for review. The local U.I. office or the local hearing office have forms you can fill out for a petition for review or you can just write a letter. You must state why you think the decision was wrong. This appeal will be based on the exhibits and testimony from the Appeal Tribunal hearing. The appeal letter to LIRC must be received at a local UI/Job Service Office or at the Local U.I. Hearing Office within 21 days of the day the decision was mailed (not when you received it). You may want to submit a legal brief supporting your position but it is not necessary. LIRC usually upholds the Appeal

Tribunal decision unless the Appeal Tribunal misapplied the law. It takes several months for LIRC to issue a decision on the appeal.

To request a Copy of Your Unemployment Insurance File, call or stop by your local UI Hearing office, located at 1801 Aberg Avenue (608) 242-4819 for the Madison Area or you can call toll free 1-800-494-4944 from anywhere in the state. Ask the hearing office for a copy of your file.

Unemployment Insurance Appeals Clinic Inc.

All appointments: Simply dial 211, toll free from any phone or call (608)-246-4357