INDIANA
WORKFORCE
DEVELOPMENT
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TO: Indiana's Workforce Investment System

FROM: Teresa L. Voors
Commissioner, Indiana Department of Workforce Development

THROUGH: Mary Johnson, Deputy Commissioner of Unemployment
Dustin Stohler, General Counsel

DATE: June 30, 2009

SUBJECT: DWD Policy 2008-42
Indiana Department of Workforce Development's Evaluation of Discharge for Unsatisfactory Attendance in Unemployment Insurance Benefit Claim Disputes

Purpose
To explain how DWD evaluates discharge for unsatisfactory attendance issues in unemployment insurance benefit claim disputes.

Rescission
None

References
Indiana Code §§ 22-4-15-1(d); 22-4-15-6.1; Holmes v. Review Bd. of Indiana Employment Sec. Div., 451 N.E.2d 83 (Ind. Ct. App. 1983); Sparks v. Indiana Dep't of Employment & Training Services, 531 N.E.2d 227 (Ind. Ct. App. 1988); DWD Policy 2008-41.

Contents
Applicability
The Indiana Department of Workforce Development (DWD) establishes this policy in the interest of providing a fair and consistent standard for evaluating discharge for unsatisfactory attendance issues for purposes of determining eligibility in unemployment insurance (UI) benefit claim disputes. This policy applies to initial determinations of eligibility as well as any subsequent appeals of those determinations to DWD's UI Appeals Division or UI Review Board.

Background
A claimant must, among other requirements, be unemployed through no fault of the claimant's own to be eligible for UI benefits. If a claimant is discharged by the claimant's most recent

employer for just cause or gross misconduct, that claimant is ineligible for UI Benefits. The term "just cause" is defined in IC § 22-4-15-1(d) and in case law. The term "gross misconduct" is defined in statute at IC § 22-4-15-6.1 and explained in DWD Policy 2008-41. This policy relates to UI benefit claim disputes involving discharge for unsatisfactory attendance, which may, but do not necessarily, arise from an employee's violation of an employer rule regarding attendance.

Just Cause for Unsatisfactory Attendance
The Indiana Code defines just cause, in part, by listing reasons constituting just cause for an employer to discharge an employee for UI benefit eligibility purposes. Discharge for a knowing violation of a reasonable and uniformly enforced employer rule, including a rule regarding attendance, is one of the reasons constituting just cause under the statute.[1] Additionally, if an employer does not have a rule regarding attendance, discharge for unsatisfactory attendance without good cause for the absences also constitutes just cause.[2]

Evidentiary Standard for Unsatisfactory Attendance Issues
With respect to UI benefit claim disputes involving discharge for unsatisfactory attendance, where an employer has a rule regarding attendance, DWD must evaluate the discharge as a violation of that employer rule. In UI benefit claim disputes arising from the claimant's violation of an employer rule, DWD will find that claimant ineligible for UI benefits if the evidence shows: 1) the claimant knowingly violated; 2) a reasonable employer rule; and 3) the employer uniformly enforces that rule.[3] If the employer does not have a rule regarding attendance and the employer discharges the claimant for unsatisfactory attendance, the claimant is ineligible for benefits unless the claimant can show good cause for the claimant's absences.[4]

Exception for Absence Due to Pre-Conviction Incarceration
Just cause for discharge for incarceration exists only if the incarceration follows a conviction of a misdemeanor or felony.[5] Consequently, if a claimant was discharged for absence due to pre-conviction incarceration and the criminal charges are later dismissed, the claimant is eligible for UI benefits.[6] In deciding UI benefit claim disputes where the charges remain pending, DWD will find the claimant eligible with respect to the discharge issue.

Therefore, even if an employee is absent in violation of an employer rule regarding an attendance, if the absence is due to incarceration prior to a conviction for charges later dismissed, DWD cannot find just cause for the discharge existed, and the claimant is eligible for UI benefits with respect to the discharge issue.[7] Similarly, in disputes where the employer does not have a rule regarding attendance, just cause for a discharge for excessive absenteeism does not exist, if the claimant's absence was due to incarceration, unless the claimant is convicted.[8]

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[1] IC § 22-4-15-1(d)(2)
[2] IC § 22-4-15-1(d)(3)
[3] IC § 22-4-15-1(d)(2)
[4] IC § 22-4-15-1(d)(3)
[5] IC § 22-4-15-1(d)(8)
[6] Holmes v. Review Bd. of Indiana Employment Sec. Div., 451 N.E.2d 83, 88 (Ind. Ct. App. 1983)
[7] Holmes v. Review Bd. of Indiana Employment Sec. Div., 451 N.E.2d 83, 88 (Ind. Ct. App. 1983)
[8] Sparks v. Indiana Dep't of Employment & Training Services, 531 N.E.2d 227, 227 (Ind. Ct. App. 1988)

Review Date
July 1, 2011

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Effective Date
July 1, 2009

Action
Indiana's workforce investment system will follow the guidance contained in this policy. Directors and managers will ensure that staff who work with this policy's subject matter are aware of the details contained in this policy and follow its guidelines.