

HEARING OFFICER'S DECISION

Colorado Department of Labor and Employment
Division of Employment and Training
U.I. Appeals Section, P.O. Box 8988
Denver, CO 80201-8988
303-318-9299 or 1-800-405-2338

Social Security: [REDACTED]
Docket Number: 11578-2013
BYB Date: 03/31/2013
Dep Decision: 04/25/2013
Date Of Appeal: 05/15/2013
Appellant: Employer
Employer No: [REDACTED]
Letter Series: 100310
Code: B

DATE MAILED: June 25, 2013

JENNA L ELLIS
[REDACTED]

WELD COUNTY
ATTN: PERSONNEL DEPT
BOX 758
GREELEY, CO 80632

STATEMENT OF THE CASE: The claimant appeared in person. Michael Rourke, Michelle Raimer and Anthony Perea appeared by telephone on behalf of the employer. Theresa White and Patty Russell appeared by telephone as observers. The hearing was held June 11, 2013 in Fort Collins, Colorado.

The hearing officer held the hearing because the employer appealed a decision issued by a deputy of the Division of Employment and Training. The deputy granted the claimant a full award of unemployment insurance benefits pursuant to Section 8-73-108 (4) C.R.S.

The hearing officer must determine whether the claimant is entitled to unemployment insurance benefits, under Colorado law, based on the cause of the separation from employment. The hearing officer affirms the deputy's decision based on the findings and conclusion stated below.

FINDINGS OF FACT: The claimant worked from August 13, 2012 until February 22, 2013 as a full-time deputy district attorney earning \$25.57 per hour. Anthony Perea supervised the claimant.

The employer discharged the claimant because the claimant made mistakes on cases the employer believed she should not have made.

The Office of the District Attorney of Weld County processes about 13,000 each year, so that each district attorney is assigned approximately 1,500 cases per year. Although not all of those cases complete the legal system and even fewer go to actual trial, the office objectively processes a large volume of cases each year. Each district attorney is expected they will bring 18 to 20 cases per year to trial.

There are federal laws and state statutes that regulate aspects of the process throughout each case. The employer noted some cases were being processed that did not adhere to the Victim Rights Act as it applies to the cases. There is the appearance in case documentation the claimant did not follow proper protocol for some of the cases she handled. The employer began tracking the claimant's handling of cases and kept notes on issues

Notice of Appeal Rights Follows Decision



the employer believed were not in compliance with accepted protocols and practices. The claimant did the best she could with her education and training to meet the expectations of the employer.

The number of cases noted that had errors were few when compared to the total number of cases handled by the claimant overall. Further, the number of errors that were not remedied was even fewer. When the claimant discovered an error either through her own actions or brought to her attention by someone else, she corrected the error as best possible. The claimant did not receive any written reprimands for her performance, only verbal coachings or warnings.

Mr. Perea took over as supervisor of the claimant's team beginning January 8, 2013. In the short time that he was the claimant's supervisor he tracked her cases and made reports on her deficiencies. Still, the claimant did not receive any written warnings regarding her job performance. She passed her bar exam in 2011 and worked in private practice prior to working for this employer.

CONCLUSIONS OF LAW: Colorado law provides for a disqualification from unemployment insurance benefits from this employer when the reason for separation is failing to meet established job performance or other defined standards, unless such failure is attributable to health reasons. All that is required to establish a disqualification is that the individual did not do the job for which the individual was hired and knew what was expected, unless the individual successfully demonstrates that the behavior was not done volitionally.

However, Colorado law provides that a claimant is entitled to unemployment insurance benefits from this employer if that claimant separates from employment through no fault of their own. Fault is not necessarily related to culpability, but only requires a volitional act or the exercise of some control or choice in the circumstances leading to the separation.

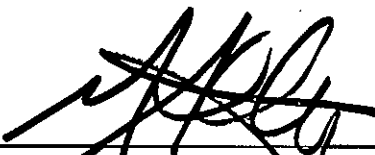
In this case, the employer discharged the claimant because she failed to meet the employer's expectations 100 percent of the time. The office handles approximately 13,000 cases each year working 8 attorneys to accomplish the job. The number of cases in which the claimant committed an irreparable egregious act was not significant compared to the total number of cases she processed. There are insufficient facts the claimant was not performing the duties to the best of her ability. There were some deficiencies in her education and experience that account for some of the errors she committed while learning on the job under high volume conditions. After considering all relevant evidence and statutes, the claimant cannot be held at fault for the separation and an award of benefits is granted.

DECISION: It is determined that the claimant is not at fault for the separation from this employment. A full award of benefits is granted under Section 8-73-108 (4) C.R.S.

The hearing officer affirms the deputy's decision.



Attention: This decision is final unless you appeal it within 20 calendar days from the date this decision was mailed, as instructed below.



M.A. ORTEGA, Hearing Officer

MAO/daw-5

IMPORTANT: This document(s) contains important information about your unemployment compensation rights, responsibilities and/or benefits. It is critical that you understand the information in this document. If needed, call (303) 318-9299; 1-800-405-2338 for assistance in the translation and understanding of the information in the document(s) you have received.

If this decision reverses a previous award of benefits, you may be liable to repay those benefits. If you have not continued to request payment on CUBLine Online or CUBLine, your claim has shut down. You must call the Customer Contact Center at 303-318-9000 or 1-800-388-5515 to reopen your claim.

¡IMPORTANTE! Este documento(s) contiene información importante sobre sus derechos, obligaciones y/o beneficios de compensación por desempleo. Es muy importante que usted entienda la información contenida en este documento. Si necesita asistencia para traducir y entender la información contenida en el documento(s) que recibió, llame al 303-318-9333; 1-866-422-0402.

APPEAL RIGHTS

An interested party may appeal this decision. The written appeal must be received by the Industrial Claim Appeals Office (ICAO) **within 20 calendar days** from the date the decision was mailed. If a timely appeal is filed, each interested party will receive an *audio copy* of the recorded hearing testimony at no cost. Parties requesting a *written transcript* for the appeal must submit payment for the approximate cost of the transcript or a completed waiver request form with the appeal. The approximate cost of the transcript of this hearing is \$426. The waiver form is available at www.coloradoui.gov/appeals.

If you wish to request a new hearing *because you failed to participate in the hearing*, you may submit a written request for a new hearing. Your written request must be received by the ICAO within twenty (20) calendar days from the date this decision was mailed in order to be considered timely. Your request must explain in detail why you failed to participate.

Submit appeals and requests directly to the ICAO, PO Box 18291, Denver, Colorado 80218-0291. You may also email, fax, or submit your appeal and/or new hearing request to the ICAO online at www.coloradoui.gov/appeals. However, please choose only one method for filing. Industrial Claim Appeals Office Phone: (303) 318-8133, Fax: (303) 318-8139, e-mail: cdle_icaos@state.co.us

Mailed, postage prepaid, to the parties named herein on *June 25, 2013*.

CC:

