



UI Appeal Hearing Closing

Persons on the telephone in the Appeal Hearing:

Williamson — Employer Primary Representative, Alice Williamson

Brown — TWC Hearing Officer

Mitchell — UI Claimant, Debbie Mitchell

Johnson — Employer Representative, Mike Johnson

IV. The Closing of the UI Appeal Hearing

Narrator: This is a recording of a typical unemployment insurance benefits hearing. The majority of unemployment hearings involve whether the claimant is qualified for benefits, based on his or her last separation from work.

A hearing has several distinct parts: opening, claimant testimony, employer testimony, and closing. This is the closing portion of the UI Appeal Hearing.

Brown, Hearing Officer: "Ms. Mitchell, let me ask you some questions. Did you ever receive the policy handbook and procedure book?"

Mitchell, UI Claimant: "The book that this form, 19-A, came out of..."

Brown, Hearing Officer: "Actually, before we get to that, just generally, did you receive some type of employee handbook when you started with the company, or at some point during your employment?"

Mitchell, UI Claimant: "I'm sure that I did. I don't have direct recall of that because it was 12 years ago."

Brown, Hearing Officer: "Did you know that dishonesty could be grounds for termination?"

Mitchell, UI Claimant: "I do not know that there is a specific termination code for dishonesty. I would have assumed that, yes, dishonesty would be grounds for termination. I am not aware of anything specifically related to termination and dishonesty."

Brown, Hearing Officer: "So what made you assume that dishonesty would be grounds for termination?"

Mitchell, UI Claimant: "Because, in the 12 years that I worked for the employer and been involved in various terminations, I was under the assumption, after seeing it happen many, many times before, that that would happen."



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Brown, Hearing Officer: "Do you feel that you were dishonest as far as this particular stop was concerned?"

Mitchell, UI Claimant: "Initially, yes."

Brown – Hearing Officer: "Why didn't you admit that you were aware of it at the beginning?"

Mitchell, UI Claimant: "I don't know that I can give you a specific reason. As soon as the word 'No' came out of my mouth, that I did not have any knowledge of it, I have never wanted to take something back so bad, and I couldn't do it. "

"I can't give you a specific reason. One of the guys who worked for me was going to get fired, and it was in order to save him."

Brown, Hearing Officer: "Did you know him personally, outside of work?"

Mitchell, UI Claimant: "No."

Brown, Hearing Officer: "So why would you go to that length to protect his job?"

Mitchell, UI Claimant: "He was very, very good at what he did. We had an issue with stops. He was very good at everything else that he did. He had a lot of loyalty to me.

Brown, Hearing Officer: "How long had he been working for you?"

Mitchell, UI Claimant: "Close to a year, I think."

Brown, Hearing Officer: "Let's go to this document having to do with stops. You wanted to make a statement about it."

Mitchell, UI Claimant: "Yes, Ma'am. There are two manuals in the Loss Prevention Office that I refer to when I have problems. One is the Loss Prevention Manual, and one is a Test and Check Manual. That manual addresses audit tests that are performed throughout the store. When I have an issue, I refer to one of those two manuals, or something on-line, because many of our manuals are now on-line. I do have a hard copy of both of those two manuals in my office. The non-productive stops document came out of a binder that we were given in a district meeting. It may have been a year ago. I'm not sure of the last date of the district meeting. We were given a manual, a binder that had numerous sections in it. When Mike came down to my office, and before we went back up to Alice's office for the second time, he asked me for that manual. And I found it on the shelf, and he flipped to the page that we're looking at in 19A, and said, 'This is what you're supposed to do.' I have many binders in my office, but I do not refer to a district meeting-issued binder to take care of problems that I have."

Brown, Hearing Officer: "OK."



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Mitchell, UI Claimant: "My position on reporting a stop was that it was something that was always done as a courtesy, not only to the store manager, but also to keep the company from incurring any lawsuits from anybody. As far as a specific policy, in the two manuals that I refer to, this is absolutely not addressed."

Brown, Hearing Officer: "OK, now had your subordinate employee made bad stops previously?"

Mitchell, UI Claimant: "Yes, he had."

Brown, Hearing Officer: "Had you reported those?"

Mitchell, UI Claimant: "Yes, I had reported them to Alice Williamson."

Brown, Hearing Officer: "Had you reported this last one?"

Mitchell, UI Claimant: "No."

Brown, Hearing Officer: "Any reason why not?"

Mitchell, UI Claimant: "Because he would be fired."

Brown, Hearing Officer: "Was he on disciplinary action because of the prior bad stops?"

Mitchell, UI Claimant: "Not at that time. He had been previously, but not at the time of this stop."

Brown, Hearing Officer: "When you found out about the bad stop, did it occur to you to report it?"

Mitchell, UI Claimant: "Yes."

Brown, Hearing Officer: "Did you talk to James, or did you just take it upon yourself not to report it? What happened?"

Mitchell, UI Claimant: "I talked to both James and the other officer involved. We had a discussion about where to go from the time of the stop to how we were going to handle it. Eventually, I just stopped the conversation with both of them, and I took it upon myself to decide what we were going to do."

Brown, Hearing Officer: "Now, did you think you would get into trouble for not reporting it?"

Mitchell, UI Claimant: "Yes."

Brown, Hearing Officer: "Why did you do that?"

Mitchell, UI Claimant: "Because James would be terminated."



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Brown, Hearing Officer: "Weren't you more concerned about your own job instead of his?"

Mitchell, UI Claimant: "I had a discussion with James. I knew that he was going to inform everybody of what actually took place if he was asked about the stop."

Brown, Hearing Officer: "OK."

Mitchell, UI Claimant: "I did not think at any point, that James would say nothing about the stop. I knew that James would tell everybody exactly what happened. I was trying to distance myself as much as possible."

Brown, Hearing Officer: "Let's go back to that last meeting, when you walked into Ms. Williamson's office. What exactly did you say to each other, and what was the sequence of it to the best of your recollection?"

Mitchell, UI Claimant: "I never recall being prompted to give Mrs. Williamson any explanation of what happened. I was never prompted for that."

Brown – Hearing Officer: "What happened when you walked in? Did she talk first or did you?"

Mitchell, UI Claimant: "I don't remember who spoke first."

Brown, Hearing Officer: "What was said?"

Mitchell, UI Claimant: "I don't know if she told me that James had just resigned. I do remember the words being said, 'We will offer you the same option we offered him. Quit or be fired.' That day in her office, my entire world was crumbling down around me. I was focused on two pieces of paper on her desk, because I had seen two pieces of paper on her desk many times before. One is a resignation form, and the other is a termination form."

Brown, Hearing Officer: "Did you actually read the two pages?"

Mitchell – UI Claimant: "No, they were turned face down. But I could see through the back of the paper, so I could see what they were. I recognized the forms. I had seen them many times before."

Brown, Hearing Officer: "Did they have your name on it?"

Mitchell, UI Claimant: "I don't know. Probably not."

Brown, Hearing Officer: "Did you ask her 'Am I going to be able to resign also?' or did she bring that up?"

Mitchell, UI Claimant: "I'm sure that I asked her if I could resign."

Brown, Hearing Officer: "And what did she say?"



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Mitchell – UI Claimant: “She handed me a resignation form.”

Brown, Hearing Officer: “Because you also testified that she told you ‘We will offer you the same option we offered him. Quit or be fired.’ So was that said or not?”

Mitchell, UI Claimant: “That’s what I recall. I know that she claims she didn’t say that.”

Brown, Hearing Officer: “You said that you were the one that asked her ‘Am I going to be able to resign also?’ How did you ask that question if she said ‘We’ll offer you the same option? How does it all go together? I’m just trying to figure out the sequence of everything.”

Mitchell, UI Claimant: “When she first told me what happened with James, she said ‘We’re going to offer you the same thing that we offered James, to quit or be fired.’ I asked ‘Am I going to be allowed to resign?’ I can’t remember the exact sequence of things, exactly as they were said. I do remember that I was going to be provided with two options. I don’t remember in what sequence those things were said.”

Brown, Hearing Officer: “If she said ‘We’ll give you the same option of quitting or being fired’, then why would you ask ‘Can I resign?’ or ‘Am I going to be able to resign’ if she had offered you that already? Do you understand what I’m asking?”

Mitchell, UI Claimant: “I completely understand. I can’t remember the sequence of events. I do know that I asked her if I was going to be able to resign. But it was also after I saw two pieces of paper turned upside down on her desk. I was very aware at that point of what was going to happen.”

Brown, Hearing Officer: “I understand. Did she say, ‘We’ll give you the same option of resigning’, or did she say, ‘quitting or being discharged.’”

Mitchell, UI Claimant: “I don’t know. I just don’t recall those exact words.”

Brown, Hearing Officer: “Is it possible that she did not actually give you the option between resignation and termination, but instead offered to let you resign, and you went ahead and did it?”

Mitchell, UI Claimant: “It’s possible.”

Brown, Hearing Officer: “To the best of your knowledge, what do you think she said?”

Mitchell, UI Claimant: “To the best of my knowledge, I was told, ‘We will allow you the same option that we gave James,’ which is to resign or be terminated. It’s possible that she didn’t say ‘terminated.’”

Brown, Hearing Officer: “Anything else?”

Mitchell, UI Claimant: “The following day, I came into the store to get some of my personal belongings from the office.”



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Brown, Hearing Officer: "As I told Ms. Williamson, we don't normally take testimony about events that occurred after the work separation, unless it's somehow directly relevant. Is this going to be relevant?"

Mitchell, UI Claimant: "I believe it's relevant."

Brown, Hearing Officer: "OK, go ahead."

Mitchell, UI Claimant: "I went to Ms. Williamson's office and asked her, 'If I had chosen not to resign, why would I have been terminated?' She said, 'For gross negligence.' She could not cite a specific policy, which is normally what we use when we terminate somebody. She said it would have fallen under a miscellaneous category of gross negligence, and that she had checked with people in legal, and they were well within their rights to do that. Those are her exact words, as far as contacting the legal department."

Brown, Hearing Officer: "Alright, and how do you feel that's relevant?"

Mitchell, UI Claimant: "I think it shows that I would have been terminated if I had not resigned."

Brown, Hearing Officer: "Anything else?"

Mitchell, UI Claimant: "No."

Brown, Hearing Officer: "Ms. Williamson, do you have any questions on cross-examination for Ms. Mitchell?"

Williamson, Employer Primary Representative: "No."

Brown, Hearing Officer: "Ms. Williamson, did you have that particular conversation with Ms. Mitchell the following day?"

Williamson, Employer Primary Representative: "Yes I did. Let me tell you, the thing that's interesting is that she asked me for the policy under which she would be fired. It proves my point. I couldn't answer her, because I hadn't gotten far enough to terminate her. I never got to specific policies. I never talked to HR to the point that we were going to terminate her. We have centralized HR operations, meaning that we have to call our HR department to know specific policies for termination. I never went that far in the process, so I was answering her to the best of my ability. I don't recall saying the word 'legal,' because I continued to say HR."

Brown, Hearing Officer: "Did you say gross negligence?"

Williamson, Employer Primary Representative: "I may have said that, but again, that's not a specific policy term."

Brown, Hearing Officer: "As far as the day of separation, you knew that she had admitted to knowing about the bad stop. If she had not resigned, what would have



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happened to her? Would you have suspended her on the spot pending further investigation, or what would have happened?"

Williamson, Employer Primary Representative: "We would have suspended her on the spot. Absolutely. Without pay. Then I would have contacted our HR department for confirmation of what to do next. It could have resulted in termination."

Brown, Hearing Officer: "So the worst that would have happened for sure is that she would be suspended without pay once she came into your office that day?"

Williamson, Employer Primary Representative: "Yes."

Brown, Hearing Officer: "Anything else Ms. Williamson?"

Williamson, Employer Primary Representative: "No."

Brown, Hearing Officer: "Ms. Mitchell, do you have any questions on cross-examination for Ms. Williamson?"

Mitchell, UI Claimant: "No."

Brown, Hearing Officer: "And Ms. Williamson, I think you said earlier that you didn't have questions on cross-examination for Ms. Mitchell; is that right?"

Williamson, Employer Primary Representative: "I do not."

Brown, Hearing Officer: "Mr. Johnson, do you have anything else to offer?"

Johnson, Employer Representative: "I just wanted to explain, the document that is the 19A."

Brown, Hearing Officer: "Go ahead."

Johnson, Employer Representative: "We conducted a training class on September 27th of 2002, where that document along with everything else in that binder was covered. The LPM or any associate is responsible for information presented, even outside of company manuals. We have e-mail correspondence that gives us directions. That information is not in a binder or a manual. We have a continually changing business. As changes occur, instead of rewriting a whole book, we add to a particular procedure or manual. I just want to clarify that the directions that we follow do not always fall within a manual. It falls in the direction that's given via e-mails, letters, and meeting documentation. I think this document is relevant to direction given from the home office in regards to how to stop and the protocol for handling bad stops."

Brown, Hearing Officer: "OK."

Johnson, Employer Representative: "That's what I wanted to offer. That's it."



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Brown, Hearing Officer: "Ms. Williamson, do you have additional questions for Mr. Johnson?"

Williamson, Employer Primary Representative: "No."

Brown, Hearing Officer: "Ms. Mitchell, do you have any questions on cross-examination for Mr. Johnson?"

Mitchell, UI Claimant: "No."

Brown, Hearing Officer: "Ms. Williamson, anything else from you?"

Williamson, Employer Primary Representative: "No."

Brown, Hearing Officer: "Ms. Mitchell, did you have any testimony in response to what you've just heard?"

Mitchell, UI Claimant: "No."

Brown, Hearing Officer: "OK. Did you want to address that document issue again or not, Ma'am?"

Mitchell, UI Claimant: "No."

Brown, Hearing Officer: "I have no further questions. Ms. Williamson, would you like to make any further statements at this time?"

Williamson, Employer Primary Representative: "No."

Brown, Hearing Officer: "Mr. Johnson?"

Johnson, Employer Representative: "No."

Brown, Hearing Officer: "Ms. Mitchell?"

Mitchell, UI Claimant: "No."

Brown, Hearing Officer: "Let me thank each of you for participating. The decision will be going out to you in the next few days. The time is 3:25 p.m. The hearing is adjourned. Thank you very much."

ALL – "Thank you."

Brown, Hearing Officer: "Goodbye."

(Beeps)

Narrator: This concludes the closing portion of the UI Appeal Hearing.