

# Can fired poor performer receive unemployment benefits?

**Q. One of our employee's job performance no longer meets our standards. While she used to be a good worker, she's now making a lot of errors, coming in late from time to time and not getting along with her co-workers. We've talked to her about these issues, but her performance has not improved. If we fire her for poor performance—which we would consider termination for cause—will she be eligible to collect unemployment compensation?**

**A.** It depends. The employee will not be eligible for unemployment compensation if you can prove that she repeatedly violated a known company policy or that her behavior was so detrimental to your interests that discharge was a natural consequence.

In Pennsylvania, an employee is not entitled to receive unemployment compensation if an employer terminated her for willful misconduct.

Willful misconduct is defined as conduct that represents:

- Wanton and willful disregard of an employer's interest
- Deliberate violation of rules
- Disregard of standards of behavior which an employer can rightfully expect from the employee
- Negligence that manifests culpability, wrongful intent, evil design or intentional and substantial disregard for the employer's interest or employee's duties and obligations.

The employer bears the burden of proving that it discharged an employee for willful misconduct; and bears the burden of proving the existence of the work rule and its violation.

Once the employer establishes that, the burden then shifts to the former employee to prove that the violation was for good cause. However, a "specific work rule is not necessary where the standard of behavior is obvious and the employee's conduct is so inimical to the employer's interests that discharge is a natural result ...."

Depending on the particular circumstances of the termination, Pennsylvania decisions have differed on whether poor performance amounts to willful misconduct. However, some Pennsylvania decisions have held that where an employee worked to the best of his ability, there was no willful misconduct, and concluded that incompetence, incapacity or inexperience isn't willful misconduct.