

8 Part Series:

The Initiator's Roll in Disciplinary Hearings

**PART 1: STANDARD OF PROOF IN DISCIPLINARY HEARINGS**

As GEO officials, we are often called upon to chair disciplinary hearings. We acknowledge that the role and importance of the initiator cannot be over emphasised.

If the initiator does not present a well prepared case, the errant employee may very well be found not guilty of the charges.

The onus of proof in disciplinary hearings lies on the employer/company, with the manager or supervisor in charge of the errant employee usually the person appointed to initiate the hearing against the employee.

This is the first in an 8-part series compiled to assist initiators with case preparation and presentation at disciplinary hearings.

PART 1: STANDARD OF PROOF IN DISCIPLINARY HEARINGS

The initiator must understand which standard of proof should be applied to disciplinary cases. Although the LRA does not prescribe the standard, it is accepted that the standard of proof applied in civil courts, i.e. on a balance of probabilities, will also apply in disciplinary or labour matters.

The meaning of standard of proof, on a balance of probabilities:

Proving that an employee is guilty of an offence on a balance of probabilities essentially means that the initiator must prove that it is likely or probable that the employee committed the offence or offences.

- In *Moahlodi v East Rand Gold & Uranium Co Ltd* (1998) 19 ILJ 597 (IC): The court stated that it is not necessary for an employer to prove an employee's guilt using the Criminal Law test of "beyond reasonable doubt". This test is a far stricter test which essentially means that the State must prove that there is no other logical explanation that can be derived from the facts of a case except that the defendant committed the crime.
- In *Minister of Safety and Security v Jordaan t/a Andre Jordaan Transport* (2000) 21 ILJ 2585 (SCA): It was held that the inference drawn from the evidence just has to be 'the most natural or acceptable inference', and not the only inference.
- In the Labour Court matter *Potgietersrus Platinum Ltd. v CCMA* (J1459/98 of 30 July 1999): The court stated that the employer must merely show through circumstantial evidence that an employee is guilty of the misconduct and that this evidence is more plausible than the possibility that the employee did not commit the misconduct.

How this applies to initiators of disciplinary hearings:

Even though the standard of proof is less onerous than that required in criminal proceedings, the initiator must still present sufficient proof that an employee is guilty of the charges brought against him/her.

This requires of the initiator to investigate incidents of misconduct, gather as much admissible and relevant evidence as possible, call witnesses and present a substantially convincing case at a disciplinary hearing.

We shall cover these requirements during the next series of newsletters.

Regards
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GEO Chairman

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E-LEARNING – INITIATING DISCIPLINARY HEARINGS

We have designed an E-Learning course covering how to initiate professional disciplinary hearings. The online course is designed for any manager or supervisor that may be required to act as an initiator in disciplinary hearings.

- The benefits of this online course are:
- Cost effective – no venue, food or travelling costs;
- Learner paced – delegates work through the material at their own speed;
- No work disruption – delegates at work;
- Convenient – delegates can pause or continue the course at any stage;
- Multiple devices – the course can be paused and continued on other devices e.g. home PC or smart phone;
- Content can be downloaded;
- Content can be customised;
- Learner progress is monitored and reports provided.

To see a demo of the course select the following link:

[E-Course Initiating Disciplinary Hearings - Power Point](#)

To access the course contact Andre Rabe on 082 491 0708 or email: andre@geo.org.za

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AND

an E-LEARNING course designed by GEO for any manager or supervisor

E-learning

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Labour Law Advice Site

Summary

The meaning of standard proof on a balance of probabilities

How this applies to initiators of disciplinary hearings



An initiator is required to:

- understand the standard of proof in disciplinary hearings;
- understand Schedule 8 and the Disciplinary Code and procedure;
- fully investigate incidents of misconduct;
- understand the difference between admissible and inadmissible evidence;
- know how to issue warnings properly;
- know how to draft charges correctly;
- properly prepare for a disciplinary hearing; *and*
- competently present a case at a disciplinary hearing.

For assistance with POPI compliance,



please contact Andre Rabe via email: andrerr@geo.org.za

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