Approved: February 23, 1995
Date

MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Alicia Salisbury at 8:00 a.m. on February 22, 1995 in Room 123-S of the Capitol.

Members present: Senators Salisbury, Burke, Downey, Feleciano, Gooch, Harris, Hensley, Kerr, Petty, Ranson, Reynolds, Steffes and Vidricksen.

Committee staff present: Lynne Holt, Legislative Research Department
Bob Nugent, Revisor of Statutes
Betty Bomar, Committee Secretary

Conferees appearing before the committee:
Terry Leatherman, Executive Director, KCCI
Jerry L. Pope, Garage Door Group, Inc.
Jeffrey A. Chanay, Manpower Temporary Services
Wayne Maichel, AFL-CIO

Others attending: See attached list

SB 106- Employment security; benefit disqualification for leaving work voluntarily or misconduct

Terry Leatherman, Director, KCCI, testified in support of SB 106 which changes the employer's burden in demonstrating employee misconduct. The proposed change clearly simplifies the employer's responsibility to sustain a misconduct charge in that an employer must show an employee did not live up to an employment obligation. It would be up to the employee to demonstrate qualification for unemployment benefits. The bill proposes to make the employer's burden for showing that an employee's repeated absence constitutes misconduct. If the employer has a written policy, the employee violates the policy, and the absences are without good cause, they would be denied benefits due to absenteeism. SB 106 also attempts to clarify the ambiguity that presently exists in drug abuse dismissals by establishing that a violation of a written drug and alcohol free work force program, which the employee knew about, is misconduct. See attachment 1

Jerry L. Pope appeared on behalf of the Garage Door Group, Inc., an employer of approximately 150 persons. Mr. Pope stated his support of SB 106 which simplifies the definition of misconduct. He related his experience in appealing referee decisions to the District Court. Mr. Pope submitted a proposed amendment : Page 5, line 15, subsection (A) striking the line in its entirety and inserting in lieu thereof: "The absence was within the control of the individual". Mr. Pope strongly supports the right of employees to receive unemployment benefits if discharged through no fault of their own; however, employees should be discharged with no benefits if they do not abide by reasonable policies and rules of which they are advised. See attachment 2

Jeff Chanay, appeared on behalf of Manpower Temporary Services, in support of SB 106. Mr. Chanay called attention to a printing omission. On Page 1, Line 21, following "work" the word "assignment" should be inserted. Section 1 of the bill clarifies the determination of benefit disqualification in situations where an employee completes a temporary job assignment and, contrary to the employment agreement, fails to make himself available for an additional job assignment. SB 106 eliminates the employer's burden of proving employee intent and shifts the burden to the employee. The proposed bill expands the law's drug testing provisions to include federal or state government approved drug and alcohol free work place programs and a written employer drug and alcohol free work place program known to the employee. This permits drug testing in accordance with identified programs, and the results of such tests are then admissible evidence to prove misconduct. See attachment 3

Senator Ranson asked whether it was advisable to insert the word "repeatedly" on Page 5, Line 15,

before the word "absent". Mr. Chanay responded that he did not believe the addition of the word would make any difference.

Wayne Maichel testified the AFL-CIO could support SB 106 if it were amended. The first amendment requested is on Page 3, Line 27 by inserting the phrase "action which is adverse to the employer's interest." On Page 4, line 39 Mr. Maichel questioned the advisability of changing "an independent" to "a licensed" health care provider due to the possible liability on the part of an employer. A second amendment requested is on Page 5, Line 17, following the word "employer's" by inserting the word "reasonable". The AFL-CIO also seeks an amendment to the drug and alcohol testing provisions, but the amendment was not prepared for committee review. See attachment 4

Terry Leatherman testified that SB 106 should be amended to establish that decisions made in an unemployment administrative hearing will not be binding or admissible as evidence in any separate action outside of the scope of the UI law. See attachment 5

The Chair referred the Committee to the additional information provided by the Division of Employment Security relating to Referee decisions. See attachment 6

The Chair advised the Committee that all amendments to SB 106 must be prepared and will be considered for final action on Friday, February 24. The meeting will commence at 7:30 a.m.

Upon motion of Senator Gooch, seconded by Senator Reynolds, the Minutes of the February 21, 1995 meeting were unanimously adopted.

The next meeting is scheduled for Thursday, February 23, 1995.

SENATE COMMERCE COMMITTEE GUEST LIST

DATE: 2-22-95

NAME	REPRESENTING
Bill Jarrell	Boeing
Jerry Pope	Garage Door Group
Terry Leatherman	KCCI
Brenda Schaette	SRS
Reggie L. Davis	KDHR
Paul Bicknell	KDHR
Linda Tierce	KDHR
Bill Cayes	KDHR
Jackie Summerson	Manpower
Christy Young	Topeka Chamber of Commerce
Mark Burghart/Ina	KDOC&H
Bernie Koch	Wichita Area Chamber of Commerce

LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry

835 SW Topeka Blvd. Topeka, Kansas 66612-1671 (913) 357-6321 FAX (913) 357-4732

SB 106

February 20, 1995

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

Senate Committee on Commerce

by

Terry Leatherman
Executive Director
Kansas Industrial Council

Madam Chairperson and members of the Committee:

I am Terry Leatherman representing the Kansas Chamber of Commerce and Industry. Thank you very much for this opportunity to explain why the Kansas Chamber supports SB 106.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 55% of KCCI's members having less than 25 employees, and 86% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

When unemployment issues are discussed, this Committee often hears that benefits are intended for workers who become unemployed "through no fault of their own." The subject for your consideration today asks you where to draw the line when an employee causes their unemployment, due to misconduct, and therefore should be denied unemployment benefits.

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Attachment 1

DEFINITION OF MISCONDUCT

Current law defines misconduct as "a violation of a duty or obligation reasonably owed the employer as a condition of employment." However, the current law reality is these are only words on a page. The real test an employer must meet in proving misconduct is:

(A) Willful and intentional action which is substantially adverse to the employer's interest; or,

(B) Carelessness or negligence of such degree or recurrence as to show wrongful intent or evil design.

In these tests, an employer must show an employee's "willful intention" or "wrongful intent" in order to sustain a charge of misconduct. As a result, current law demands an employer present facts probing into what an employee was thinking when misconduct occurred.

SB 106 proposes to change the employer's burden in demonstrating employee misconduct. The two part test of misconduct is stricken. As a result, the employer's burden in demonstrating misconduct would be to show an employee "violated a duty or obligation reasonably owed the employer as a condition of employment."

The proposed change would clearly simplify the employer's responsibility to sustain a misconduct charge. However, it would be unfair if the case ended without considering conditions which led to a termination. Employee "intent" is important. That is why it is important to make clear that an employer meeting their burden of proof of misconduct does not mean a case is closed and benefits are denied.

Current law would allow an employee to establish their rights for benefits through KSA 44-706(B)(4), which can be found on page 5, line 23 of SB 106. Especially important are the defenses an employee can show in section (B). They qualify an individual for benefits if they were making a good faith effort to perform work, but were discharged for: (1) inefficiency; (2) unsatisfactory performance due to inability, incapacity or lack of training or experience; (3) isolated instances of

ordinary negligence or inadvertence; (4) good faith errors in judgment or discretion; or, (5) unsatisfactory work or conduct due to circumstances beyond the individual's control.

SB 106 shifts the responsibility in "misconduct" cases. An employer must show an employee did not live up to an employment obligation. It would then be up to the employee to demonstrate that there are reasons why they should qualify for unemployment benefits.

ABSENTEEISM

SB 106 proposes to make the employer's burden for showing that an employee's repeated absence constitutes "misconduct" to a three-step process. If the employer has a written policy, the employee violates the policy, and the absences are without good cause, they would be denied benefits due to chronic absenteeism.

While the proposed change would make the absenteeism test more objective, it has been criticized as encouraging employers to adopt a strict absenteeism policy, in order to win unemployment compensation cases. However, such a conclusion denies a reality of the business world. Employers do not set up a policy to have employees fail. Instead, employment policies are established to permit a business to operate effectively.

DRUG ABUSE

A vexing problem appears to remain in cases where drug use constitutes misconduct. If an employer orders a drug test for an employee where there is probable cause there has been drug use, if there is a positive test result and the employee is fired, then the employee will be denied benefits because of misconduct. However, if the employer extends the worker the chance for drug rehabilitation, the employee later fails a random drug test given to assure they are no longer a drug user, and the employee is then fired, that employer will lose an unemployment compensation case. The reason for this is Kansas requires any drug abuse dismissals to be related to work, which does not exist in a random drug test.

SB 106 attempts to clarify this by establishing a violation of a written drug and alcohol work force program which the employee knew about is misconduct.

Undeniably, SB 106 makes it easier for an employer to allege misconduct in an unemployment compensation case. However, the changes proposed in SB 106 do draw the line properly by allowing workers unemployed "through no fault of their own" to receive benefits, while denying benefits to employees who caused their job loss through "misconduct." As a result, KCCI would urge your support for SB 106.

Thank you for this opportunity to comment on SB 106 today. I would be happy to attempt to answer any questions.

The Garage Door Group, Inc.

East Hills Business Park
3800 Greenway Circle
Lawrence, KS 66046

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TESTIMONY BEFORE THE KANSAS SENATE COMMERCE COMMITTEE
IN FAVOR OF SENATE BILL 106
February 22, 1995

The Garage Door Group, Inc. expresses its appreciation for the opportunity to testify in favor of SB 106. We believe that this bill will simplify the definition of misconduct under the unemployment compensation laws, and save time and money in the administration of unemployment compensation cases.

The unemployment compensation laws of the State of Kansas were created to relieve the economic distress of individuals who find themselves unemployed through no fault of their own, or for reasons beyond their control. The Garage Door Group supports both the letter and the spirit of this legislation, and each year pays thousands of dollars in taxes to do so.

However, the legislature in its wisdom recognized that some people would become unemployed because they refuse to meet the obligations of employment, and it provided that they should not be compensated for their misconduct. It provided definitions for misconduct and charged the Board of Review with resolving disputes in these cases.

In 1992 and 1993, the Garage Door Group spent over $10,000 in legal fees seeking judicial relief from four decisions of the Board. Happily for our company, we prevailed in these cases. Although our experience rating, and therefore our tax rate, was favorably influenced by these court rulings, this was not the primary reason for our pursuing relief from the Board's decisions.

Our primary reason for seeking reversal of the Board's decisions is that we believe the right to discharge employees for cause is the very heart of the disciplinary system of any company. The ultimate source of the power to discipline, and therefore the power to maintain order, is the threat of discharge. If the penalty of discharge is eased by the award of unemployment benefits, the power to discipline is severely undermined, and the order of an organization is seriously threatened.

In three of our four cases, the Board ruled that there was no "substantial adversity" to the employer. In two cases the Board also ruled that there was no "willful or intentional action" or "wrongful intent or evil design". In another case the Board ruled that an employee's absences were for "good cause". In every the case the court said that the Board was wrong. In three of the four cases, the court said that the Board had improperly applied and interpreted the law.

Why would their be such a discrepancy between the Board and the courts in the interpretation of the unemployment compensation laws regarding misconduct? If we assume conscientiousness on the part of both the Board and the courts, the answer must center on a lack of agreement as

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Attachment 2

to what constitutes phrases such as, "substantially adverse", "willful and intentional action", "wrongful intent", "evil design", and "good cause".

These phrases are pejorative and emotional, and their definitions can be difficult to agree on. These phrases involve value judgments which some people may be loathe to make. The changes which SB 106 would make to KSA 44-706(b)(1) would eliminate much of the need for placing these value judgments on the conduct of an employee and leave us with a much simpler task of deciding whether the employee's actions were a "violation of a duty or obligation reasonably owed the employer as a condition of employment". For this reason The Garage Door Group strongly supports SB 106.

The Garage Door Group also supports the changes which SB 106 would make to KSA 44-706(b)(3), with one exception. We would like to see "(A) the individual was absent without good cause" changed to, "(A) the absence was within the control of the individual". Almost universally every individual believes that there is good reason for his or her absence, but if the individual has control over the absence then he or she must assume some responsibility for it.

The Garage Door Group is not a vindictive employer. It cares deeply for its employees. They are its most important asset, and their goodwill and cooperation are essential to its success. When some of our employees must be laid off or discharged for reasons other than misconduct, The Garage Door Group strongly supports their right to receive unemployment compensation. But when employees are discharged because they choose not to abide by reasonable rules and policies, then we believe that for them to receive unemployment compensation benefits is unfair to the Company, its employees, and the citizens of the State of Kansas.

We therefore urge the passage of Senate Bill 106. Thank you.

Respectfully submitted,

THE GARAGE DOOR GROUP, INC.

Jerry L. Pope
Manager of Manufacturing Services

JLP:dwf

MEMORANDUM

To: Senate Commerce Committee

From: Jeffrey A. Chanay

Date: February 21, 1995

Subject: Kansas Employment Security Law/Senate Bill 106

Madame Chairman and Members of the Committee:

My name is Jeff Chanay and I am an attorney in private practice with the Topeka law firm of Entz & Chanay. My practice principally involves the representation of employers in employment, labor, workers compensation and unemployment compensation matters. I appear today on behalf of Manpower Temporary Services. I thank you for the opportunity to testify in favor of Senate Bill 106.

Since its initial passage in 1937, the Kansas Employment Security Law has been intended to address the problem of economic insecurity due to unemployment. Indeed, the State public policy, as set forth in K.S.A. 44-702, provides:

> As a guide to the interpretation and application of this Act, the public policy of this state is declared to be as follows: Economic insecurity, due to unemployment, is a serious menace to the health, morals, and welfare of the people of this state. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the legislature . . . .

The Kansas Supreme Court has stated the law is intended "to protect against involuntary unemployment - that is, to provide benefits for those who are unemployed through no fault of their own and who are willing, anxious and ready to support themselves and their families, and who are unemployed because of conditions over which they have no control." Clark v. Board of Review Employment Security Division, 187 Kan. 695,698 (1961). An unemployed person is eligible to receive benefits only if it is found that he is able to work, is available for work, and is making reasonable efforts to obtain work. Id.

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Attachment 3.

Senate Bill 106 contains four substantive amendments to the Employment Security Law. First, SB 106 makes it clear that in the temporary employment industry, failure of an employee at the conclusion of a job assignment to affirmatively request an additional assignment constitutes leaving work voluntarily. This amendment passed the Senate last year as Senate Bill 738, but died in the House for lack of action. Second, SB 106 eliminates the employer's burden of proving employee intent for purposes of determining employee misconduct. Third, SB 106 modifies the misconduct test in the area of chronic absenteeism. Fourth, SB 106 clarifies and expands the law in regard to drug testing. It is submitted that all four amendments represent a significant improvement in the administration of the law.

Turning first to the temporary employment amendment, for many years, temporary employment agencies have been involved in disputes with the Department of Human Resources concerning the proper elements of proof in determining benefit disqualifications in situations where an employee completes a temporary job assignment and contrary to the employment agreement, fails to make themself available for an additional job assignment. The Manpower franchisees have taken the position that an employee is disqualified from receiving benefits if the individual left work voluntarily without good cause attributable to the work or the employer at the conclusion of one job assignment and fails to return to work on the next succeeding day to request an additional job assignment. The Department of Human Resources, on the other hand, has taken the position that a temporary employment agency must not only show that the employee left work without good cause attributable to the work or the employer, but must also show that comparable work at comparable pay would have been made available to the claimant had the claimant actually sought additional work. This amendment clarifies that an employer in these circumstances should not be required to prove that specific work assignments are available until it has been established that the employee was available for work. Thus, an employee's availability for work is a threshold question to be determined in a hearing on an application for unemployment benefits. Whether or not the employer has work available is secondary and is a moot question if the employee has not reported for work.

In the area of misconduct, SB 106 eliminates the employer's burden of proving employee intent. Instead, SB 106 requires that K.S.A. 44-706(b)(1) be read <u>in pari materia</u> with K.S.A. 44-706(b)(4). Under subsection (b)(4) the <u>employee</u> is afforded the opportunity to demonstrate seven reasons why his or her discharge is not for misconduct (K.S.A. 44-706(b)(4)(A), (B)(i) - (v), (C)). The result of SB 106 will be to shift the burden of proving "intent" from the employer to the employee, who is in reality the only person who can explain the action which led to the discharge.

The next substantive amendment found in SB 106 involves the misconduct test for chronic absenteeism and lateness. SB 106 significantly simplifies the misconduct test by focusing on the employer's written absenteeism policy and the employee's knowledge of that policy. SB 106 also removes a Referee's subjective ability to determine if an absence is "substantially adverse" to an employer's interest. Instead, the employer itself is given the right to establish what absenteeism policy is appropriate to the business. The employer is required, however, to put that policy in writing and prove that the employee had knowledge of the policy. Oral notification of the policy is insufficient and an employee will be cleared for benefits in those instances.

The final amendment found in SB 106 expands the law's drug testing provisions to include federal or state government approved drug and alcohol free workplace programs and a written employer drug and alcohol free work place programs known by the employee. This amendment would permit drug testing in accordance with these programs and deems the results of such tests admissible evidence to prove misconduct.

It is submitted that Senate Bill 106 is fair and restores a balance to the administration of the Employment Security Law. No properly qualified individual will be denied unemployment benefits under SB 106.

Thank you for your consideration of this matter, and I would request that Senate Bill 106 be recommended favorably for passage by the Committee.

SUGGESTED AMENDMENTS TO

SENATE BILL No. 106

(Submitted by the Kansas AFL-CIO)

1. Pg. 3, Lines 24 through 27:

   Strike all of (A) and (B). Insert: "action which is adverse to the employer's interest."

2. Pg. 5, Line 17: Amend to read:

   in violation of the employer's <u>reasonable</u> written absenteeism policy; and

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Attachment 4

COLLATERAL ESTOPPEL

ISSUE:

The law should be amended to establish that decisions made in an unemployment administrative hearing will not be conclusive, binding, or admissible as evidence in any separate action outside the scope of the UI law. This would prevent the finding of a UI hearing from determining the issues of cases that require litigation.

ARGUMENTS:

There is a substantial increase in employment separations where the employee is suing the former employer for wrongful discharge. The Unemployment Hearing precedes the trial and many Judges are giving binding affect of the Unemployment Hearing decision to the wrongful discharge lawsuit. If Judges continue to allow Unemployment Hearing decisions to be binding in the subsequent lawsuit trial, the scope and intent of these administrative proceedings will be greatly altered and ultimately take on the characteristics of a courtroom trail as compared below:

CURRENT UI HEARINGS	UI HEARING-LAWSUIT ALSO FILED
1. Conducted by Administrative Law Judge.	1. Conducted by Administrative Law Judge.
2. Informal and open discussion of facts.	2. Formal and structured.
3. Employees and employers represent themselves.	3. Both side will have legal representation.
4. Hearing lasts approximately 1 hour.	4. More formal structure due to legal consequences and representation - may last a few days.
5. Decisions usually issued within 2 weeks.	5. Undoubtedly much longer due legal issues and consequences.

In addition, these lengthy hearings will increase the workload for the Administrative Law Judges who are already understaffed. Also, many employees and employers will have additional legal expenses to deal with the Unemployment Hearing.

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Attachment 5.

612.533 Introduction of certain evidence concerning claims for benefits prohibited in separate or subsequent proceeding. Any finding of fact or law, judgment, determination, conclusion or final order made by the administrator or an appeal tribunal, examiner, board of review, district court or any other person with the authority to make findings of fact or law pursuant to NRS 612.450 to 612.530, inclusive, is not admissible or binding in any separate or subsequent action or proceeding, between a person and his present or previous employer brought before an arbitrator, court or judge of this state or the United States, regardless of whether the prior action was between the same or related parties or involved the same facts.

(Added to NRS by 1987, 151; A 1993, 1832)

Affirmations and Reversals of Misconduct Issues
Calendar Year 1994

Nonmonetary Issue	Total	Per Cent	Decisions Affirmed	Per Cent	Decisions Reversed	Per Cent
Grand Total	13,288	100.0	8,149	61.3	5,139	38.7
Claimant Decisions						
Total	9,008	100.0	5,024	55.8	3,984	44.2
Misconduct	2,214	100.0	1,083	48.9	1,131	51.1
All Other	6,794	100.0	3,941	58.0	2,853	42.0
Employer Decisions						
Total	4,280	100.0	3,125	73.0	1,155	27.0
Misconduct	3,206	100.0	2,325	72.5	881	27.5
All Other	1,074	100.0	800	74.5	274	25.5

Kansas Department of Human Resources
Division of Staff Services
Labor Market Information Services
February 1995

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Commerce

Attachment 6.

Table 5
Misconduct Nonmonetary Determinations
SFY 1994

Issue	Number	Per Cent 1/
Total	17,244	100.0
Clearances	14,129	81.9
Notice of intent to leave	125	0.7
Seeking other work	17	0.1
Not qualified for job	124	0.7
Physical or health problem	208	1.2
Work performance unsatisfactory	2,394	13.9
Incompatibility, not intentional	56	0.3
Failed to pass physical exam	2	a/
False work application	26	0.2
Work assigned in excess of contract	5	a/
Unavoidable absenteeism	164	1.0
Unavoidable tardiness	10	0.1
Replaced while on bonafide leave of absence	39	0.2
Off–the–job incident	66	0.4
Unknown reasons	152	0.9
Conduct or attitude	1,058	6.1
Driver's license suspended	33	0.2
Involuntary retirement	5	a/
Employment terminated by mutual agreement	207	1.2
Failed drug screening test	38	0.2
Failed to comply with company policies	690	4.0
Failed to participate in drug screening test	4	a/
Lateness–no written notice	78	0.5
Lateness–late with good cause	56	0.3
Absence–not substantially adverse to the employer	22	0.1
Absence–no written notice	541	3.1
Absence–absent with good cause	789	4.6
Lack of work–employer protest	386	2.2
Claimant reported fired–employer reports quit–lack of work or not for misconduct	641	3.7
No employer response	5,880	34.1
Claimant reported fired, employer's report is different–lack of work or not misconduct	261	1.5
Failed to participate in drug screening test–employer failed to establish probable cause or that test was required by law and condition of employment	10	0.1
Failed drug screening test–employer failed to establish probable cause or that test was required by law and condition of employment	38	0.2

Failed drug test–test sample not collected and labeled by independent health care professional.....	1	a/
Failed drug test–test sample not confirmed by gas chromatography or other comparably reliable analytical method.....	1	a/
Failed drug test–test sample not taken timely with event establishing probable cause.....	1	a/
Failed drug test–test sample not collected and labeled by independent health care professional or individual authorized to collect or label test samples.....	1	a/

Table 5 (Cont)

Issue	Number	Per Cent
Denials	3,115	18.1
Unexcused absences	374	2.2
Repeated tardiness	32	0.2
Failed to report to work	149	0.9
Refused to work overtime	15	0.1
Attendance standards not met	206	1.2
Fighting on the job	60	0.3
Sleeping on the job	25	0.1
Insubordination	85	0.5
Failure to comply with company policies	684	4.0
Damage to equipment or property	32	0.2
False work application	40	0.2
Refused to perform assigned work	53	0.3
Causing dissention among employees	7	a/
Property use unauthorized	21	0.1
Work standards not met	73	0.4
Consumed intoxicants on job	2	a/
Reported to work intoxicated	14	0.1
Possessed controlled substance on employer's property	3	a/
Conduct or attitude	613	3.6
Converting employer's monies or property	95	0.6
Loss of driver's license	10	0.1
Continued absence from work	302	1.8
Continuing to report late for work	89	0.5
Impaired by nonprescribed controlled substance while working—probable cause to believe use, possession, or impairment	7	a/
Failed drug test—test sample established as same sample taken from claimant	2	a/
Failed drug test—test performed by approved laboratory	6	a/
Failed drug test—test sample confirmed by gas chromatography or other comparably reliable analytical method	3	a/
Failed drug test—test sample taken timely with event establishing probable cause	6	a/
Refused to submit to drug test—probable cause	3	a/
Possessed alcoholic or cereal malt beverage while working	2	a/
Used or impaired by alcoholic or cereal malt beverage while working	16	0.1
Reported to work under the influence of alcoholic or cereal malt beverage	28	0.2
Impaired by nonprescribed controlled substance while working—probable cause to believe use or impairment	3	a/
Possessed nonprescribed controlled substance while working	4	a/
Refused to submit to drug test—test required by law and condition of employment	6	a/

Failed drug test–test sample collected as prescribed by test mandated by law and required condition of employment	34	0.2
Earnings not verified–DOU not satisfied	11	0.1

1/ Detail may not sum to total due to rounding.
a/ Less than 0.1 per cent