

# Membership Matters

Quarterly News from The 501 Alliance

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*June 2015*

## **Did You Post a Job Yet?**

We've had a great response to our new member benefit that allows members to post jobs to our web site for free. To date, we've had almost 20 jobs posted and it's already become the second most visited page on our web site. Jobs that have been posted include a Direct Care Counselor, Outpatient Therapist and an Advancement Officer.

To post a job, log-in to our web site using your user name and password. Then click on "Post a Job" from the member menu and provide the required information. Once you have posted your job, it will be uploaded to our web site within 72 hours. Job postings will be available for 30 days and then they will be automatically removed. You must be a member and registered on our web site to post a job. If you have not registered yet, please contact Mike Pennanen at 800-968-9675, ext. 2950 for your PIN.

If you would like to view the jobs that have been posted, just click on the Employment Opportunities icon on our home page at [501alliance.org](http://501alliance.org). All of the details about the jobs and instructions on how to apply will be provided within the postings.

## **Officers Elected**

The Board of Directors elected the individuals listed below to serve as officers of the group at their last meeting. Each officer is elected to serve a one-year term and can serve up to a maximum of three terms in the same office. Please join me in congratulating the following individuals.

President:	Mr. Greg Scott Pioneer Resources
Vice President:	Mr. Lary Wells Michigan League for Public Policy
Treasurer:	Mr. Mike Blau Attorney
Secretary:	Mr. Larry Poupard Financial One Accounting, Inc.

For a listing of all of the individuals on the board, please visit our web site at [501alliance.org](http://501alliance.org). If you're interested in becoming a director, please contact the Administrator at 800-968-9675.

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### How Would You Rule?

#### **Background:**

The claimant, a customer service representative, filed for benefits after being discharged. She was disqualified upon a finding that she was fired for misconduct connected with her work. The claimant disagreed and appealed and a hearing was scheduled before an administrative law judge (ALJ).

#### **At the Hearing:**

*Employer's testimony:* The claimant violated our harassment policy, which she received at hire. The policy prohibited any conduct that creates an offensive work environment. The employer received reports that the claimant showed an inappropriate picture of a male coworker to another coworker. The employer's witness did not see the photo or discuss the situation with the claimant prior to discharge.

*Claimant's testimony:* The claimant testified she showed a coworker a picture of another male coworker but the picture was not offensive. The claimant testified she was being harassed by the male coworker and was telling the other coworker about it when the picture was shown. The claimant testified she was not given an opportunity to explain what happened before she was discharged.

#### **The Hearing Decision:**

The ALJ ruled the employer failed to prove misconduct and the claimant was allowed benefits. The ALJ found the employer failed to prove the claimant's actions violated the employer's policy. The employer did not present the picture as evidence and did not present any first-hand testimony about the incident in question. The employer disagreed with the decision and appealed to the Board of Review, arguing the claimant's admission that she showed the coworker a picture was sufficient evidence to prove the incident happened.

#### **The Board of Review Decision:**

The Board of Review agreed with the ALJ. The claimant's first-hand denial under oath that the picture was not offensive was more persuasive than the employer's hearsay testimony to the contrary. The employer's witness relied only on a report made by an employee who did not appear to testify at the hearing. The employer failed to carry its burden of proof and the decision allowing benefits was affirmed.

#### **Takeaways:**

1. It is the employer's burden to prove misconduct in a discharge case. The only evidence an ALJ can consider is the evidence presented to him or her at a hearing. In this case, the employer might have proven misconduct by presenting the picture as evidence that it was offensive.
2. Hearsay evidence will not be considered more persuasive than a credible denial by a witness who is testifying under oath at the hearing. In this case, the claimant presented the only first-hand testimony and her denial, under oath, that the picture was not offensive was taken with more weight than the employer's hearsay testimony to the contrary. The ALJ was bound by the legal principle that credible first-hand evidence always overcomes hearsay testimony to the contrary.