



## **Appeal Tribunal**

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Trenton, NJ 08625-0936

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SS #: 140-68-3958  
Docket #: DKT00003386  
Date of Claim: 09/22/2013  
Date of Appeal: 11/15/2013  
PC : 10  
Appellant: Claimant  
Mailing Date: 01/29/2014

### **Decision of the Appeal Tribunal**

#### **IN THE MATTER OF:**

The claimant appealed on November 15, 2013 from a determination of the Deputy, mailed November 6, 2013, imposing a disqualification for benefits as of September 22, 2013 on the ground that the claimant was discharged for severe misconduct connected with the work.

The claimant, with counsel, participated in a telephone hearing on January 29, 2014.

#### **FINDINGS OF FACT:**

The claimant worked for the above-named employer, as a full-time general manager from on or about May 15, 2012 through September 25, 2013, when discharged from the job. On September 25, 2013, the employer terminated the claimant for lacking poor judgment in a whistleblowing matter involving an employee on the claimant's crew. The claimant did not lack poor judgment in the matter. The claimant reported the employee's suspicious activities to his supervisor. Prior to his termination, the claimant did not receive any warnings from the employer.

An initial claim for unemployment benefits was filed effective September 22, 2013, establishing a weekly benefit rate of \$612.00. No benefits have been paid on this claim.

#### **OPINION:**

N.J.S.A. 43:21-5. An individual shall be disqualified for benefits:

(b) For the week in which the individual has been suspended or discharged for misconduct connected with the work, and for the seven weeks which immediately follow that week, as determined in each case.

For the week in which the individual has been suspended or discharged for severe misconduct connected with the work, and for each week thereafter until the individual becomes reemployed and works four weeks in employment, which may include employment for the federal government, and has earned in employment at least six times the individual's weekly benefit rate,

as determined in each case. Examples of severe misconduct include, but are not necessarily limited to, the following: repeated violations of an employer's rule or policy, repeated lateness or absences after a written warning by an employer, falsification of records, physical assault or threats that do not constitute gross misconduct as defined in this section, misuse of benefits, misuse of sick time, abuse of leave, theft of company property, excessive use of intoxicants or drugs on work premises, theft of time, or where the behavior is malicious and deliberate but is not considered gross misconduct as defined in this section.

In *Silver v. Board of Review*, 430 N.J. Super 44, 53 (App. Div. 2013), the Court described the misconduct analysis under the regulatory standard as follows:

By its plain terms, this rule prescribes a two-prong standard to establish misconduct. First, the conduct must be improper, intentional, connected with the work, malicious, and within the employee's control. Second, the conduct must also be either a deliberate violation of the employer's rules or a disregard of the standards of behavior which the employer has the right to expect. This test is more stringent than the *Am. Jur.* passage quoted in *Beaunit Mills*.

Decisions of the appellate tribunals must be based on competent evidence. Verbal or written information, submitted outside of the hearing, is hearsay and not competent. When a hearing is held and the claimant is accordingly interrogated, the Appeal Tribunal is bound, in the absence of the employer after due notice of a hearing, to accept the competent, credible testimony before it even though it be contrary to the employer's allegations.

In this matter, the claimant's actions do not constitute misconduct connected with the work. There was no evidence presented by the employer that the claimant's actions were improper, intentional, connected with the work, and malicious and that he deliberately worked below the standards of behavior which the employer had the right to expect.

Therefore, no disqualification applies under N.J.S.A. 43:21-5(b), as the claimant was not discharged for misconduct connected with the work.

#### **DECISION:**

No disqualification applies under N.J.S.A. 43:21-5(b), as the claimant was not discharged for misconduct connected with the work.

The determination of the Deputy is reversed.

/s/ Carolina Curbelo  
APPEALS EXAMINER

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## APPEAL RIGHTS

**IMPORTANT:** This decision will become final, unless, within twenty (20) days of the date of mailing or notification, a written appeal is filed with the Board of Review, Department of Labor, Labor Building, PO Box 937, Trenton, New Jersey 08625-0937. If the last day allowed for the appeal occurs on a Saturday, Sunday or legal holiday, the appeal will be accepted if received or postmarked on the next business day. The appeal period will be extended if good cause for late filing is shown. Good cause exists in situations where it can be shown that the delay was due to circumstances beyond the control of the appellant, which could not have been reasonably foreseen or prevented. Please specify the reason for your appeal, and if possible, attach a copy of this decision. Please take notice that in the event that any party files a timely appeal to the Board of Review from this decision of the Appeal Tribunal, the Board hereby exercises its authority pursuant to N.J.S.A. 43:21-6(e) to take jurisdiction over any and all issues arising from the Appeal Tribunal decision regarding the determination(s) of the Deputy/Director. While unemployed and claiming benefits, the claimant must report as instructed by the Division.

**IMPORTANTE:** Esta decisión será final, amenos que dentro de veinte días a partir de la fecha en cual esta decisión fue enviada o notificación dada, una apelación en escrito es recibida por la Junta de Repaso, Departamento de Labor, Edificio de Labor, PO Box 937, Trenton, New Jersey, 08625-0937. Si el último día autorizado en su apelación fuera ser un sábado, domingo o día de fiesta, su apelación será aceptada si la estampilla está marcada con el próximo día laboral. El periodo de apelación solo puede ser extendido por buena causa. Buena causa existe en situaciones en donde puede ser comprobado que la demora en apelar su decisión fue causada por circunstancias fuera de su control, en la cual es razonable asumir que no era posible de anticipar o prevenir tal circunstancia. Favor de incluir su razón por la cual está apelando, y si es posible, adjunte una copia de esta decisión. Favor de reconocer que en el evento que cualquier partido someta una apelación a tiempo a la Junta de Repaso de la decisión del Tribunal de Apelaciones, la Junta reserva el derecho según la autoridad dada por las leyes de NJSA 43:21-6(e) en mantener jurisdicción sobre cualquier y todo motivos debidas por la decisión del Tribunal de Apelaciones hechas por el Diputado o Director. Mientras esté desempleado y reclamando beneficios, el reclamante tiene que reportarse según las instrucciones que reciba de la División.