

DECISION DIGEST

Actual cases and rulings from Princeton Claims Management



July 2016

EMPLOYER PREVAILS ON UI APPEAL

Background

A hospital unit representative (employee) was discharged for theft of a patient's wallet.

The owner reported the missing wallet. Security reviewed its surveillance cameras, which showed the employee picking up the wallet, passing the security desk and exiting the hospital. Security contacted and questioned the employee the next morning. The employee said she had the wallet and intended to return it. Later that same day, the employee returned the wallet but was suspended pending an employer investigation. The employer terminated the employee for theft because she failed to report or turn in the wallet in accordance with hospital policy.

Process

The former employee (claimant) filed an unemployment claim and was held disqualified from benefits for severe misconduct, which met the deliberate and malicious requirement under N.J.S.A. 43:21-(b). The claimant disagreed and filed an appeal. A hearing was held before an Appeal Tribunal examiner with the claimant, her counsel, an employer witness and Princeton Claims Management, the employer's UI agent.

The claimant testified to the examiner that she forgot about the wallet under her arm until it fell to the floor at her home. She was asked why she did not notify the employer directly and responded that she was too tired after a long shift and just wanted to rest. Although the claimant's testimony was suspect, the employer acknowledged it could not prove that she intended to keep the wallet and argued that the claimant's failure to follow policy was deliberate, which constituted misconduct.

Judgment

The Examiner rejected the employer's argument and held the claimant eligible without disqualification stating she "never intended to keep the wallet" and therefore, the evidence was insufficient to support a severe misconduct disqualification.

The employer strongly disagreed with this decision. Princeton Claims Management appealed to the Board of Review and argued that the claimant's testimony was questionable, highly improbable and not representative of an individual with good intentions. The Board of Review agreed with the employer and reversed the decision on the record (which it rarely does). In its opinion the Board wrote, "We find the claimant's contention, that she forgot she had the wallet under her arm, until she returned home, to be incredible and self-serving." Hence, the Board was "satisfied that the claimant's actions were deliberate, malicious and constitute severe misconduct connected with the work."

This case demonstrates the importance of having an experienced agent represent and protect an employer's interests throughout the UI administrative appeals process. The disqualification period for severe misconduct is indefinite and saved the employer \$17,000 in UI benefit charges.

For more information about Princeton Claims Management contact LuAnne Rooney-Frascella at 609.936.2207 or lfrascella@njha.com.