

# DECISION DIGEST

Actual cases and rulings from Princeton Claims Management



JULY 2017

## EMPLOYER MEETS “PREPONDERANCE OF THE EVIDENCE” STANDARD OF PROOF

### Background

A maintenance mechanic (employee) was terminated for sleeping on the job. He worked the overnight shift and was entitled to two paid breaks. Due to minimal staffing at night, he was required to respond to all radio calls even during his break periods. On the night in question, his manager came into the hospital at 3:00am to follow up on important work orders that needed to be completed that night. The employee could not be located or reached on his radio. After several unanswered calls, the manager and a security guard searched the hospital and located him asleep in a locked storage room lying on a bed with blankets and pillows. The manager documented the incident on video with his cell phone. When the employee awoke he yelled obscenities and denied any wrongdoing. He contended he was on an approved break and was resting his eyes. He was sent home and suspended pending investigation.

### Process

The former employee (claimant) filed an unemployment claim and was held disqualified for simple misconduct due to sleeping on the job. He contended he was on his break and was merely resting his eyes.

The claimant, his attorney, the employer’s witness and agent Princeton Claims Management participated in the hearing. There was no dispute among the parties that the claimant was found in a secluded storage room lying down and did not respond to several radio calls. The claimant contended he was set up because the employer wanted to get rid of him. He further claimed other workers used the storage room to rest and were not terminated.

### Judgment

The examiner rejected the claimant’s testimony and opined that the “preponderance of the evidence” showed that the claimant was not available to take calls while he was lying down in a locked room. Furthermore, “while entitled to take a break, he [claimant] was nevertheless subject to recall, a fact which the Tribunal infers to mean a requirement to respond to any and all radio calls.” Thus, the claimant’s contentions were rejected; the employer met its burden of proof and the claimant was disqualified for simple misconduct under N.J.S.A. 43:21-5(b).

*This case is important because it demonstrates how and why the employer met its standard of proof through the “preponderance of the evidence.” The examiner rejected the claimant’s testimony and held that the employer’s evidence supported work related misconduct.*

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