



SEPTEMBER 2017

OFFENSIVE LANGUAGE IN THE WORKPLACE CONSTITUTES MISCONDUCT

Background

A hospital switchboard operator (employee) was discharged for inappropriate behavior and for using profane language during a conversation with a caller. The operator was experienced with years of training on how to handle difficult people and situations. A caller (customer) became upset when the operator transferred her to a wrong extension twice and then disconnected the call. The upset customer called a third time with disrespectful words for the operator, who during this call, lost her composure and used offensive language towards the caller. The caller reported the incident to the hospital the next day and the employee was suspended pending an investigation. The employee's supervisor listened to a recording of the call and substantiated that the operator's behavior and language was unacceptable. The employee was terminated for violation of the hospital's code of conduct.

Process

The former employee (claimant) filed an unemployment claim and was held disqualified for simple misconduct due to inappropriate behavior and language in the workplace. The claimant disagreed with the determination and filed an appeal contending it was an isolated incident and should not have resulted in her discharge. She further contended that everyone "loses their cool" especially when challenged by difficult customers.

The claimant, her supervisor and the employer's agent, Princeton Claims Management, participated in the hearing. The claimant testified she was going through a lot of personal problems at the time of the incident and although she tried to control her emotions, she still lost her composure with the customer. She admitted using profane language, but said she was under pressure and was not thinking clearly. She acknowledged she received communication training and should have handled the situation more effectively. The employee's supervisor testified that while she understands the challenges of dealing with the public, the claimant's actions, although isolated, constituted an egregious violation of the employer's reasonable standards. Furthermore, although the employer sympathized with the claimant's personal situation, it cannot ignore her unfortunate behavior and its impact on the hospital's honorable reputation. Therefore, Princeton Claims Management argued that the claimant's disqualification for simple misconduct was warranted and should be affirmed.

Judgment

The appeals examiner agreed with the employer that a "worker is expected to refrain from offensive language and behavior" in the workplace. Although the examiner was also sympathetic to the claimant's personal circumstances, she opined that it does not excuse her behavior. The examiner further ruled that since the claimant's behavior and language went beyond the ordinary reaction of a reasonable person her exchange with the caller constituted misconduct as defined under N.J.S.A. 43:5(b).

This case illustrates that the NJ UI Law does not accept personal problems as justification for inappropriate behavior or language in the workplace.

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