

# DECISION DIGEST

*Actual cases and rulings from Princeton Claims Management*



NOVEMBER 2018

## Board of Review Reverses Misconduct Decision

### Background

A dietary aide was suspended without pay after a workplace verbal altercation with a co-worker. The aide was annoyed with a co-worker who delayed her request for immediate assistance. The co-worker told the aide to “hold your horses” because she was busy. The angered aide responded with offensive and threatening language near elderly patients. Following an investigation, the aide was terminated for inappropriate behavior and language in the workplace.

### Process

The former employee (claimant) filed an unemployment claim and was held eligible for benefits without disqualification. The employer and its agent, Princeton Claims Management, disagreed with the determination. An appeal was filed that contended that the claimant’s discharge constituted misconduct and violated the employer’s policy regarding unacceptable behavior and language in the workplace.

All parties appeared for the Appeal Tribunal hearing. The claimant admitted to her inappropriate workplace behavior by using offensive language, but contended it was an isolated incident and should not have resulted in her discharge. She further justified her language and actions by stating that the co-worker was difficult to work with and should have been more helpful. The employer’s witness testified that the claimant had a “short fuse” and was often impatient when making requests for assistance. Although the employer recognized the claimant’s frustration, it did not excuse her inappropriate behavior and language. Therefore, the employer argued that her behavior was a deliberate disregard of the employer’s standards, which constituted misconduct as defined under N.S.A. 43:21-5(b).

### Appeal Tribunal Judgement

The Appeal Tribunal (AT) rejected the employer’s argument and opined that the claimant’s behavior was not misconduct because it did not go beyond the “ordinary reactions of a reasonable person.” The employer disagreed and then appealed to the Board of Review, the final level of the administrative appeal process. The employer argued that a reasonable individual would have walked away from the situation.

### Board of Review Judgment

The Board of Review reviewed the hearing record, employer’s written argument and affirmed the Appeal Tribunal’s Findings of Fact, but disagreed with the opinion that there was no misconduct. In fact, the Board held that the Findings supported misconduct because the claimant initiated the incident by making inappropriate remarks to the co-worker and continued to engage in the behavior rather than just walking away. Hence, the Board opined, the claimant’s actions are not considered to be an “ordinary reaction of a reasonable individual.” Therefore, the AT Decision was reversed and the claimant was disqualified for work connected misconduct under N.J.S.A. 43:21-5(b).

*This case illustrates that it is important to persevere and challenge Appeal Tribunal Decisions when the Findings of Fact do not support its Opinion. Choosing to engage in inappropriate behavior in the workplace, instead of walking away, constitutes work connected misconduct under N.J.S.A.43:21-5(b).*

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