

# DECISION DIGEST

*Actual cases and rulings from Princeton Claims Management*

MAY 2019

## No Firsthand Witness - No Misconduct

### Background

A certified nursing assistant (employee) was terminated for an inappropriate interaction with a patient's family member regarding patient care. The family member was upset with comments made by the employee to a co-worker about the unreasonable demands of the family and her suggestion they take the patient elsewhere if they were dissatisfied with the care. The family member complained to the Director of Nursing about the assistant's raised voice and negative attitude. She did not want the assistant to care for her mother and asked that she be reassigned. The employee denied raising her voice and contended it was the family member who was rude to her. Since this was not an isolated incident and the employee was on a performance improvement plan, she was terminated for violating the employer's policy for inappropriate behavior that compromised patient care.

### Process

The former employee (claimant) filed an unemployment claim and was held disqualified for misconduct due to her violation of the employer's policy. The Deputy determined that since the claimant had been previously warned about similar unprofessional conduct, her actions "constituted a willful and deliberate disregard of the standards of behavior the employer had a right to expect." The claimant disagreed with the determination and filed an appeal arguing that when family was disrespectful to her, she removed herself from the situation and asked her supervisor for assistance.

The claimant and employer witness with Princeton Claims Management appeared for the hearing. Both the claimant and employer provided conflicting testimony concerning the interaction. The claimant acknowledged the family was unhappy with her, but contended their demands were unreasonable and she never raised her voice or told them to go elsewhere. In fact, she sought the assistance of a supervisor because she did not want the situation to escalate. The employer testified that "patients always come first" and this was not the first time the claimant was involved in such conduct. In fact, she was on a performance improvement plan for similar behavior. Although the employer did not have a firsthand witness for the incident in question, it found the family member's complaint credible and terminated the claimant for violation of its policy regarding patient care.

### Judgment

The Appeal Tribunal examiner disagreed with the Deputy's determination of misconduct and opined "the disqualification does not apply simply because the claimant in the past has been guilty of misconduct." Since the employer did not have a firsthand witness and relied on hearsay testimony and the claimant's past performance, it did not meet its burden of misconduct and the claimant is eligible and not disqualified for misconduct under N.J.S.A. 43:21-5(b).

*This case demonstrates the importance of a firsthand employer witness to meet its burden in substantiating misconduct within the meaning of the law. Although a claimant may have had misconduct in the past, the final incident resulting in the discharge is the determining factor when imposing the misconduct disqualification. While hearsay testimony is admissible in UI hearings, it is not given the same weight as firsthand testimony when imposing a disqualification from benefits.*

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