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Vaping Violates Smoke Free Policy

Background

A respiratory therapist (employee) was terminated for violating the employer's smoke free policy. The policy precluded smoking anywhere on campus, including outside. The employee was aware of the policy and smoke free signs were posted throughout the hospital. The employee was seen smoking an e-cigarette during a break outside the hospital and was reported to management by a coworker. The employer confronted the employee the next day and she admitted to vaping on the hospital's premises. The employee contended it did not violate policy because e-cigarettes do not burn tobacco and are odorless. The employee was placed off duty and later terminated for violating the employer's smoke free policy.

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 employer's agent, Princeton Claims Management, (PCM) provided the employer's written policy, which banned smoking on campus and identified cigarettes, cigars, pipes vapes and e-cigarettes. The claimant contended she was not aware that vaping/e-cigarettes were included in the policy and therefore she should not have been terminated and disqualified for misconduct because she did not deliberately disregard the policy.

The claimant and PCM appeared for the hearing. All parties agreed that the claimant was terminated for violating the employer's smoke free policy. The claimant acknowledged that smoking leads to disease and disability and given her clinical background she should have known better. She testified further that she was addicted to nicotine and thought vaping would help her quit. She argued that vaping was harmless because it does not produce smoke and is odorless. The hospital's director of respiratory therapy testified that e-cigarettes do not contain as many toxins as regular cigarettes; however, they contain nicotine, heavy metals and other cancer-causing agents and are potentially harmful to the vaper and those close by. The employer empathized with the claimant's addiction, but it could not overlook her irresponsible decision to vape on its premises, and failure to promote healthy behavior. In closing, PCM argued that the misconduct disqualification was appropriate because the claimant violated the employer's policy and the standards of behavior expected of a clinician.

Judgment

The Appeal Tribunal examiner rejected the claimant's testimony and held that her contention was self-serving and not credible. It further opined that "the policy was reasonable; the claimant should have been aware of the policy and she has not evidenced a compelling reason for failing to abide by the policy." Hence, the disqualification for work-connected misconduct was upheld under N.J.S.A. 43:21-5(b).

This case illustrates the importance of including electronic smoking devices in an employer's Smoke Free Policy and defining the areas throughout the hospital campus, including its associated outdoor areas covered by the policy.

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