

# DECISION DIGEST

*Actual cases and rulings from Princeton Claims Management*

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## FIRSTHAND TESTIMONY PREVAILS OVER HEARSAY

### Background

A health access scheduler (employee) worked in the hospital's outpatient department full time for more than ten (10) years. Over the course of her employment, she had been counseled numerous times for clerical errors and inappropriate behavior. She acknowledged her mistakes and attributed them to the fast-paced work environment, but denied any inappropriate behavior. On a particularly busy day, several of her co-workers were late to work, which meant she was working solo at the registration desk. When they arrived, she took them to task for their tardiness and raised her voice and belittled them, all of which was overheard by a patient in the waiting room. The patient was upset and reported the incident to the patient relations department. Following an investigation, it was decided that, given the employee's disciplinary history, including warnings and a suspension, she would be terminated for violation of policy.

### Process

The employee (claimant) filed an unemployment claim and was held disqualified due to work-related misconduct for behavior not in the employer's interests. The claimant disagreed with the determination and contended that she did not do anything wrong when she respectfully confronted her coworkers about their tardiness because it affected her work assisting patients.

The claimant pursued an appeal to the Appeal Tribunal and participated in a hearing with two (2) employer witnesses and their agent (Princeton Claims Management). The claimant agreed she was previously warned about her demeanor in the workplace, but excused it as her style, which can be loud, but never nasty. She further contended that she was unaware of a patient in the area and, therefore, should not be blamed for saying anything inappropriate because it was her coworkers who were late and should be held accountable. Both employer witnesses testified that they did not observe the incident in question, but had warned the claimant previously about loud confrontations in the workplace. Moreover, she was told that any future incidents could result in termination and, if she needed assistance, she should contact her supervisor. Since this was not an isolated incident, she was terminated for violation of the employer's policy.

### Judgment

In the Appeal Tribunal's decision, the examiner opined that, while the claimant's conduct may have been improper, it did not rise to misconduct, as she denied raising her voice or belittling her coworkers and was unaware that a patient was within earshot of her conversation. Since the employer witnesses were not present during the incident and they had provided no firsthand witnesses to dispute the claimant's testimony, her testimony was considered credible. Therefore, the employer failed to meet its burden and the claimant's actions did not constitute misconduct, as defined under N.J.S.A. 43:21-5(b), and she is eligible for UI benefits without disqualification.

*This case demonstrates the importance of providing firsthand witnesses at hearings. Understandably in this case, the employer did not want to involve coworkers or a patient. They were aware that it was their burden to substantiate misconduct and firsthand testimony prevails over hearsay, but decided to participate in the hearing anyway, on principle, because it was important to be heard in accordance with due process.*

For more information about Princeton Claims Management or unemployment insurance eligibility amid COVID-19 please contact *LuAnne Rooney Frascella* at 609.936.2207 or [lfrascella@njha.com](mailto:lfrascella@njha.com).