

# DECISION DIGEST

*Actual cases and rulings from Princeton Claims Management*

JULY 2023

## GROSS NEGLIGENCE IN A “KEY POSITION” CONSTITUTES MISCONDUCT

### Background

A Licensed Practical Nurse (LPN) worked in an assisted living facility caring for geriatric residents. She was responsible for administering a rapid Covid-19 test to all her assigned residents on a day in March of 2023. She was expected to complete this task during her shift and document the results in the residents’ records. The LPN only tested five (5) of the twenty-five (25) residents on the day in question. She did not request additional assistance and reported that all the tests had been completed with all negative results. The following day, she admitted that she had not had time to test all of her assigned patients, so she completed testing and found three (3) positive results, which she reported. She was discharged that day for failing to perform her assigned duties, falsifying medical records, and posing a risk to the health of her residents.

### Process

The employee filed a UI (unemployment insurance) claim contending that she did not deliberately harm her residents and did the best she could to complete her work. She further claimed that she had documented the testing in the residents’ records because she intended to finish the task the next day. The DOL deputy determined that her actions constituted misconduct due to gross negligence because she should have known better. The employee appealed the determination arguing that she was overworked, underpaid, and did not willfully harm any residents.

The appellant claimant and an employer witness with a representative from PCM appeared before an Appeal Tribunal examiner. The claimant testified that her actions should not have been considered misconduct but merely a performance failure. She further claimed that the employer did not stress the importance of completing the testing and she was overworked since the facility was understaffed. The employer witness testified that it was within the LPN’s control to notify the supervisor that she needed assistance. The employer conceded that staffing was an ongoing concern, but the LPN did not bring it to the supervisor’s attention on the day in question and it was wrong to document that testing had been completed. These violations demonstrated a disregard of the employer’s procedures and a neglect of duty that properly resulted in her discharge and a UI misconduct disqualification.

### Judgment

In the Appeal Tribunal’s Decision, the examiner opined that, since the claimant was a medical professional, she should have known the risks associated with Covid-19 for geriatric residents. It is “implausible” that the claimant was unaware of the importance of testing and regardless, as an LPN (clinician) she was in a “Key Position” which necessitated accuracy in the performance of her duties. Hence, her actions in failing to complete her duties coupled with improper documentation are considered gross negligence and rise to misconduct under N.J.S.A. 43:21-5(b).

*This case illustrates that, when a clinician (LPN) cannot complete her duties due to time constraints, it is her responsibility to notify a manager and to document accurately in a medical record. While no harm came to the residents in this case, the LPN was in a “key position” and should have known better than to neglect her duties and falsify medical records.*

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