

Issue: February 2017

Briefly: An Unemployment Case Analysis

Background

The claimant was discharged for repeated violations of company policy. She was allowed benefits upon a finding that she was discharged, but not for misconduct connected with the work. The employer appealed, and a hearing was scheduled before an administrative law judge.

At the Hearing

The Employer's Evidence: The employer testified that the claimant, a retail manager, had received several warnings throughout her employment for various violations of company policy and performance concerns. The claimant had received the employer's policies at the beginning of and throughout her employment, and as a manager, was charged with their enforcement. During her final warning for failing to follow security policy, the claimant was told that any further violations of company policy could result in her discharge. On the date of the final incident, the claimant gave a significant employee discount to a former employee who had not worked for the employer for two months. The claimant was aware of the former employee's resignation because she'd read the employee's resignation letter.

The Claimant's Evidence: The claimant testified that she had received and understood the employer's policies. She acknowledged receiving the warnings as testified to by the employer. She testified that on the date of the final incident, she gave the former employee the employee discount because she believed the employee still worked for the company, despite the fact that the claimant had read the former employee's resignation letter. The former employee had an employee card which was still active in the system and which allowed the discount to be applied to the transaction.

The Hearing Decision

The Administrative Law Judge found that the claimant was discharged for misconduct connected with the work, and she was disqualified from benefits. The ALJ found that the claimant had violated the employer's employee discount policy, and that the claimant's final warning had placed her on notice that the incident could lead to her discharge. The claimant disagreed and appealed, arguing that she reasonably believed that the former employee was still employed because the discount card was still active. The claimant argued that her manager should have ensured that the card was deactivated and could no longer be used, which would have prevented the final incident.

The Board of Review Decision

The Board of Review agreed with the Administrative Law Judge's decision and the decision remained in effect. The employer had proven that the claimant had repeatedly violated company policy and had received a final warning. That warning should have placed the claimant on notice that she should have been more careful on the date of the final incident, particularly because the claimant had read the resignation letter. Additionally, as a manager, one of the claimant's responsibilities was removing the discount card from the system.

Takeaways

1. **It is not always necessary for a claimant to have been warned regarding a specific violation to be disqualified from benefits.** In this case, the claimant had received several warnings throughout her employment, but not for violating the employer's discount policy. *This claimant had received a final warning in which she was informed that any further violations of company policy could result in her discharge. Even though the incidents were not similar, the claimant had been placed on specific notice that "any" other violation of company policy could result in her discharge.*
2. **Managers are generally held to a higher standard with regard to violations of policy.** In this case, the claimant's argument was that the final incident was not her "fault" because her manager had failed to deactivate the former employee's discount card. *The employer successfully argued in this case that as a manager, the claimant also had the responsibility to deactivate the card, so she could not shift blame for the incident to her manager. The claimant had read the resignation letter and the former employee had not appeared to work in two months. As a manager, the claimant had a duty to do at least some investigation before giving the discount, and at least ask the former employee if she was still working. The state agreed with the employer. Her failure to ensure that the policy was followed rose to the level of misconduct connected with the work.*

Please remember: Unemployment Laws vary from state to state. The result in this case might be different from a case in your state.

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