



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: JANUARY 07, 2021

IN THE MATTER OF:

Appeal Board No. 612679

PRESENT: MICHAEL T. GREASON, MEMBER

The Department of Labor issued the initial determination holding the claimant eligible to receive benefits. The employer requested a hearing and objected contending that the claimant should be disqualified from receiving benefits because the claimant voluntarily separated from employment without good cause; or, in the alternative, that the claimant should be disqualified from receiving benefits because the claimant lost employment through misconduct in connection with that employment and that wages paid to the claimant by such employer should not count in determining whether the claimant files a valid original claim in the future.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by and on behalf of the claimant and on behalf of the employer. By decision filed October 8, 2020 (A.L.J. Case No.), the Administrative Law Judge sustained, effective February 21, 2020, the employer's objection that the claimant should be disqualified from receiving benefits because the claimant lost employment through misconduct and overruled the initial determination.

The claimant appealed the Judge's decision to the Appeal Board. The Board considered the arguments contained in the written statement submitted on behalf of the claimant.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant worked as a fulltime assistant manager in a

parking lot managed by the employer for about three years until February 5, 2020. On February 6, 2020, the claimant was feeling ill and went to the hospital. He texted his supervisor to report that he was unable to report to work due to illness and that he had medical documentation. The claimant advised his supervisor that he could report next on February 8, 2020 as scheduled. The claimant was treated at the hospital on February 6, 2020 and released the same day.

On February 8, 2020, the claimant continued to experience a stomachache, nausea, and diarrhea. The claimant called his supervisor to report that he still unwell and that he could not report to work. The claimant was scheduled to work on February 9, February 11 and February 12, 2020. The claimant's supervisor told him it was okay, and he could "take a couple of days off." The claimant did not report to work as scheduled and did not seek further medical attention.

On or about February 15, 2020, the claimant contacted his supervisor and advised that he was ready to return to work. His supervisor told him that since his absence was for more than three, consecutive days, he would need to provide medical documentation. The claimant provided the medical documentation for his hospital visit on February 6, 2020. However, when he called his supervisor to find out when he could return to work, he was told he needed to provide further medical documentation and to call the company vice president. On February 21, 2020, the vice president confirmed that the claimant needed to provide further medical documentation for his absences and that if he did not provide same by February 23rd, he would be terminated. Since the claimant did not seek medical attention after February 6, 2020, he had no further medical documentation to provide. The claimant was terminated, effective February 24, 2020 for failing to provide medical documentation to substantiate his absences on February 9, February 11 and February 12, 2020.

OPINION: The credible evidence establishes that the claimant was discharged for failing to provide medical documentation to substantiate his absences on February 9, February 11 and February 12, 2020. We do not agree that the claimant was a no call/no show on three or more consecutive days and was then discharged for same. Although the employer contended that the claimant abandoned his job by failing to report to work on these days and for failing to contact his employer about the absences, the testimony of the claimant's direct supervisor establishes that when the claimant called him on February 8, 2020 to report he was still unwell, the supervisor authorized the claimant to

take a few days off. It, therefore, cannot be said that the claimant abandoned his job by taking an unauthorized absence of which the employer was not aware. In addition, the employer did not discharge the claimant until February 24, 2020 after he failed to provide additional medical documentation to substantiate the additional absence.

However, the evidence fails to establish that the claimant knew he could be terminated for failing to provide medical documentation to substantiate the absence at issue. The supervisor's testimony establishes that when he authorized the absence, he did not discuss the need to substantiate the absence with additional medical documentation. The claimant then did not seek further medical attention. The testimony of both parties establishes that, only after these absences, was the claimant told that he first needed to provide medical documentation because his absence was of three or more consecutive days. When he provided the medical documentation he had from the initial absence, he was told it was insufficient. It was then not until some weeks after the absence at issue, that the claimant was advised that he would be discharged if he did not provide further documentation to substantiate the additional days of absence. As such, we find that the claimant could not have known that a failure to substantiate his absence with further medical documentation would lead to his discharge. Since the claimant's additional absence was authorized and he was unaware that he would be discharged for failing to provide further medical documentation, we conclude that the claimant's separation occurred under non-disqualifying circumstances.

DECISION: The decision of the Administrative Law Judge is reversed.

The employer's objection, that the claimant should be disqualified from receiving benefits because the claimant voluntarily separated from employment without good cause that the claimant should be disqualified from receiving benefits because the claimant lost employment through misconduct in connection with that employment and that wages paid to the claimant by such employer should not count in determining whether the claimant files a valid original claim in the future, is overruled.

The initial determination, holding the claimant eligible to receive benefits, is sustained.

The claimant is allowed benefits with respect to the issues decided herein.
(Al reclamante se le asignan beneficios con respecto a los temas decididos en

el presente.)

MICHAEL T. GREASON, MEMBER