



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

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DECISION OF THE BOARD

Mailed and Filed: NOVEMBER 02, 2021

IN THE MATTER OF:

Appeal Board No. 615128

PRESENT: MARILYN P. O'MARA, MEMBER

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective September 1, 2020, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by ST LUKES ROOSEVELT prior to September 1, 2020 cannot be used toward the establishment of a claim for benefits. The claimant requested a hearing.

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 the claimant and on behalf of the employer. By decision filed April 07, 2021 (), the Administrative Law Judge overruled the initial determination.

The employer appealed the Judge's decision to the Appeal Board. The Board considered the arguments contained in the written statement submitted by the employer.

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

FINDINGS OF FACT: The claimant worked for the employer, a hospital, as a supervisor from November 13, 2006 until August 31, 2020. The claimant worked Monday through Friday from 8:00 AM to 4:00 PM. The claimant supervised the administrative staff in the hospital oncology and hematology department. He was also a liaison to the clinical team, responsible for being available to provide support to the hospital clinical staff. He was required to tell his staff if he was taking a break.

The employer's policy provides that loafing or sleeping on duty may result in disciplinary action or dismissal.

On August 17, 2020, the claimant fell asleep in a vacant patient care area at around 2:30 pm. He was not on break but had fallen asleep for about 15 minutes. He did not tell anyone he was taking a break.

A coworker found the claimant sleeping and took a video of him on her cell phone. The claimant was sitting in the chair in a reclining position with his feet on the footrest. The curtains were closed.

The nurse manager woke up the claimant. He apologized for falling asleep and continued to work the remainder of his shift.

On August 19, 2020, the claimant's supervisor was made aware of the claimant sleeping on the job on August 17, 2020. On August 31, 2020, the claimant was discharged for sleeping on the job.

OPINION: The credible evidence establishes that the employer discharged the claimant for sleeping on the job. The claimant admitted that he was sleeping when he was found by a coworker and was not taking a break. The claimant's contentions, that he was unaware of the employer's policy prohibiting sleeping on duty and that he did not know his actions could jeopardize his job, are rejected. The claimant was a supervisor of administrative staff and admitted that he knew that sleeping at work was wrong. He supervised the administrative staff in the hospital oncology and hematology department. He was also a liaison to the clinical team and charged with being available to provide support to the hospital clinical staff. His behavior in sleeping during his shift, without having told anyone of his whereabouts, made him unavailable to the hospital clinical team had any issues arisen. It is well-established that sleeping on the job may constitute disqualifying misconduct. The Board has held that the act of sleeping on duty by a health care worker is so egregious that a warning is not a prerequisite to a finding of misconduct (See Appeal Board No. 595667). In the case at hand, the claimant's action in sleeping at work was detrimental to the interests of the employer and constitutes misconduct. Accordingly, we conclude that the claimant lost his job under disqualifying conditions.

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

The initial determination, disqualifying the claimant from receiving benefits, effective September 1, 2020, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by prior to September 1, 2020 cannot be used toward the establishment of a claim for benefits, is sustained.

The claimant is denied benefits with respect to the issues decided herein.

MARILYN P. O'MARA, MEMBER