



THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT
BOARD OF REVIEW

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**BOARD OF REVIEW
DECISION**

JOHN A. KING, ESQ.
CHAIRMAN

DONNA A. FRENI
MEMBER

SANDOR J. ZAPOLIN
MEMBER

In the matter of:

CLAIMANT APPELLANT:

S.S.
Local Office #01

Appeal number: **BR-**

EMPLOYING UNIT:
Behavioral Health Network Inc.
c/o UTCA, Inc.
P.O. Box 15347
Springfield, MA 01115

EMP. #72-026020

Introduction and Procedural History of this Appeal

The claimant appeals a decision by a review examiner of the Division of Unemployment Assistance (DUA) to deny unemployment benefits after his discharge from employment. We review pursuant to our authority under G.L. c. 151A, § 41, and reverse.

On August 31, 2007, the DUA concluded that the claimant's failure to follow the employer's medication administration policy was a knowing violation of a reasonable and uniformly enforced rule, and the DUA disqualified the claimant from receiving unemployment benefits. The claimant appealed to the DUA hearings department. Both parties attended the hearing held before a DUA review examiner. The review examiner determined that the claimant had knowingly violated the employer's policy, and affirmed the DUA's denial of benefits. We remanded the case to the review examiner to take additional evidence and issue consolidated findings of fact. Both parties and their representatives attended the remand hearing, and the review examiner issued his consolidated findings of fact on January 4, 2008.

The issue on appeal is whether the claimant was discharged for a knowing violation of a reasonable and uniformly enforced rule or policy of the employer.

Consolidated Findings of Fact

The DUA review examiner's consolidated findings of fact are set forth below in their entirety:

1. The claimant was employed full-time from 6/06/05 through 8/01/07 as a residential coordinator by the employer which operated programs for individuals suffering from mental illness.
2. The employer contracted with the Department of Mental Health for the delivery of services and was bound by their regulations along with other state and federal laws and regulations.
3. The claimant was issued a Guidance Manual by the employer when hired for which he signed an acknowledgment of receipt on 6/6/05.
4. Within the manual section titled IMMEDIATE DISCHARGE, it is stated that "Jeopardizing the safety, health, or wellbeing of a client" may result in immediate discharge.
5. As a part of his duties the claimant was responsible for the administration of medications to participants in the program.
6. The claimant was experienced in these procedures as he was issued certification by the Department of Health and by his prior work history.
7. The procedures of the Medical Administration Program require that any error in administering of medication to [sic] participant be immediately reported to the regulatory agency, which was DMH.
8. The employer had an expectation that any notice of medication error would be made known immediately to the employer Program Director.
9. It was the claimant's belief that the medication error reports were solely a tracking tool for overall review of quality of care and did not affect the immediate direct care of the patients. He believed that at the time the errors were discovered action was taken locally to ensure patient health and safety such as physician or pharmaceutical contacts along with notice to the employee of the error on their part.
10. The claimant always performed his duties to the best of his abilities but found that he could not complete all tasks assigned to the position within the time allowed. He found this problem to increase when in February 2007 his administrative office relocated more distant [sic] from the residences that he supervised. For this reason he began to prioritize which tasks needed to be completed in entirety in a timely manner and which were of lesser importance.

11. The claimant did not discuss the priorities he established with the employer. He did tell the employer of his general inability to complete all the tasks assigned by the employer and requested additional assistance. The claimant did not fully explain what tasks were not being completed or had been given low priority.
12. The employer took no action on his request as it was not known that there were tasks that had not been completed and it felt that he did not need additional assistance to complete his tasks as his peers were able to perform the duties satisfactorily in a timely manner.
13. The Program Director first had a discussion with the claimant in November, 2006 followed by another in March, 2007 about medication errors and the manner of reporting them. The claimant referred to his past dealings with DMR regarding medication errors while employed by other employers.
14. The Program Director informed the claimant that he must now conform to the standards of DMH for reporting which required the report be submitted within seven days of the error and that the employer's expectations were even higher than DMH for the reporting of such incidents requiring more immediate notice to the Program Director.
15. The Program Director further stated that the information was needed and recorded so that training, re-training, or possibly disciplinary action could be taken with the employee if needed to ensure it did not happen again thereby protecting the safety and health of participants.
16. It was discovered by the employer during an audit of the Medication Administration Program at the claimant's workplace that there was a discrepancy in the number of medication errors as compared to the number of reports forwarded to the Program Director or DMH.
17. Further investigation determined there were 41 incidents of medication errors which had been reported at the time of the incident to the claimant in his position as residential coordinator but had not been reported by him to either the Program Director or DMH.
18. The employer found medication error reports previously given to the claimant within drawers of the claimant's desk and also left unmarked in a file cabinet. The claimant had taken no action on these reported errors.
19. The employer questioned the claimant about these reports. His response was that he had too many duties and had determined that this was not a high priority so he had chosen not to take immediate or any action.
20. The employer as was required did report all of the previously unreported medication errors to DMH.

21. The employer found that the claimant's action had jeopardized the safety, health or well being of clients and so discharged the claimant for that reason along with harming the employer's reputation and possibly adversely affecting further funding or contracts.
22. The Program Director in consultation with Human Resources issued the claimant a letter of termination which cited his failures to follow policy and procedure which jeopardized the health and safety of clients as well as the employer's reputation with a funding source.
23. The employer ended the letter "Unfortunately it is apparent that as Residential Coordinator you are unable to uphold the standards necessary to serve our vulnerable consumers. Therefore your employment with Behavioral Health Network is terminated effective immediately."
24. It is the employer's understanding that DMH suspended the claimant's MAP Certification pending investigation into the matter.

Ruling of the Board

The Board adopts the DUA review examiner's consolidated findings of fact. In so doing, we deem them to be supported by substantial and credible evidence.

There is no dispute that the claimant was discharged. Nor is there any disagreement that the claimant was discharged for failure to follow the employer's policy regarding the reporting of medication errors. Therefore, whether the claimant is entitled to unemployment benefits will be governed by the portion of G. L. c. 151A, § 25(e)(2), concerning violations of employer policies. The relevant part of section 25(e)(2) states:

No waiting period shall be allowed and no benefits shall be paid to an individual under this chapter for . . . the period of unemployment next ensuing . . . after the individual has left work . . . (2) by discharge shown to the satisfaction of the commissioner by substantial and credible evidence to be attributable to . . . a knowing violation of a reasonable and uniformly enforced rule or policy of the employer, provided that such violation is not shown to be as a result of the employee's incompetence, . . .

The employer's rule that medication errors must be reported within seven days was reasonable since this was a requirement of the Department of Mental Health (DMH) and the employer was contractually bound to meet DMH requirements. The employer informed the claimant of this requirement. Although aware of the policy, the claimant still did not timely report medication errors. However, our analysis does not end once it is established that the claimant knowingly violated a reasonable rule. We must still examine why the claimant failed to follow the employer's policy.

The consolidated findings of fact show that the claimant always performed his duties to the best of his abilities, but he found himself unable to complete all of his assigned tasks. This situation worsened in February 2007 after the employer relocated the claimant's office further away from the residences he supervised, leading to an increase in the amount of time he spent traveling during the day. The claimant informed the employer that he was unable to complete all his job duties and asked for additional assistance. The employer felt the claimant should be able to perform his job with the resources already at his disposal. Since he was unable to complete all assignments, the claimant prioritized his duties and ascribed a lesser priority to reporting medication errors. Medication errors that were reported to the claimant had already been handled by his staff, who had contacted either a doctor or pharmacist to ask how to remedy the error. The claimant, therefore, considered reporting to DMH an administrative function rather than an issue of safety for his residential clients. When the employer learned that dozens of medication errors had not been reported, it viewed the claimant's failure to follow policy as a safety and health issue for clients, and immediately discharged him.

The claimant exercised poor judgment in not assigning a high priority to the reporting of medication errors. However, a lapse in judgment does not preclude a claimant from receiving unemployment benefits. The claimant was unable to adequately perform his job even though he worked to the best of his abilities. Under these circumstances, the claimant's failure to follow the employer's policy was incompetence within the meaning of the section 25(e)(2). Accordingly, the claimant is not denied benefits under the statute.

We reverse the DUA review examiner's decision. The claimant is entitled to benefits for the week ending August 11, 2008, and subsequent weeks, if otherwise eligible.

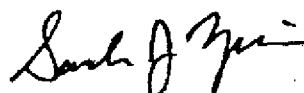


John A. King, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF MAILING - March 24, 2008



Donna A. Freni
Member



Sandor J. Zapolin
Member

ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS DISTRICT COURT
(See Section 42, Chapter 151A, General Laws Enclosed)
LAST DAY TO FILE AN APPEAL IN COURT- April 23, 2008