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INSUFFICIENT CHECKS

Writing insufficient funds checks to one's employer to obtain cash is as illegal as it would be to write them to any other business or institution. An employer is not a bank and should not bear the burden of advancing cash to an employee if the employee does not have sufficient funds to cover the check. It is willful misconduct per se. An employer is not required to have a policy against it.

INSUFFICIENT CHECKS

Case Applications

86 AT 11371 BR

Facts: Claimant was a beauty school instructor. She was discharged for cashing checks at her place of employment which were returned for insufficient funds, for suspicion of theft, student complaints, working on her personal hobby at work, and talking baby talk. Claimant said she cashed checks because her paycheck did not arrive on time. Claimant's bad checks did not correspond to paydays. The paychecks were late only once. There was no evidence to support the employer's other allegations.

Held: The insufficient checks were written over a period of time with the last one written two months prior to claimant's discharge. The policy stated that employees could not cash checks at work after two of their checks were returned. The policy was not followed by the employer and claimant's discharge was not for bad checks since the occurrence was too remote in time from her discharge. The employer condoned the conduct by not taking action earlier. No proof of misconduct.

Result: Benefits allowed.

7 BR 79

Facts: Claimant was discharged for writing insufficient checks to the store where she worked. In one week, the employer said claimant wrote $125 in bad checks. The claimant made good on them right before her discharge. Claimant said she worked long hours and did not have time to make bank deposits. There was no company policy against cashing checks.

Held: Even if the employer does not have a policy against it, claimant's actions were still not right. Claimant's excuse was not valid. She could have used a night depository. Misconduct shown.

Result: Benefits denied.

LACK OF WORK

If an employee is laid off for lack of work, there is no willful misconduct, and benefits are allowed. If an employee is employed by a temporary employment agency and is not placed upon the termination of an assignment, the employee is laid off for lack of work. It is of no consequence that the employee subsequently moved out of the area. The employee was already separated by lack of work, not by job abandonment. In instances where work was available but the employee has been led to believe otherwise and failed to show up for work, the employee is allowed to rely on the statements or actions of a supervisor which led the employee to believe that work is not available.

LACK OF WORK

Case Law

Pope v. Bd. of Rev. et al., C-86-688 (Grady Co. D. Ct. 3-30-87)

Facts: Claimant was employed by the federal government as a contract teacher at an Indian school. He was paid an annual wage based on the number of hours worked. He was not a contract teacher, but a year-round employee. Claimant was notified that he was furloughed from July 13 through September 6 due to a lack of funds. Claimant filed for benefits during that time. The Commission held he had a reasonable assurance of being reemployed the next term and benefits were denied.

Held: The District Court held that claimant was employed on a 52-week basis and was furloughed without pay. While contract teachers observed a vacation, claimant had not in previous years had summer vacation as he was a GS-9 year-round employee. Section 2-209(2) does not apply. Claimant was laid off for lack of work.

Result: Benefits allowed.

Case Applications

02 AT 3124 BR

Facts: Claimant was employed manufacturing air conditioners. He was laid off due to lack of work. Claimant had begun work there through another temporary agency. A new staffing company obtained the contract with the air conditioner manufacturer and transferred the claimant to their payroll. When claimant was laid off he was told that he would be recalled when production resumed. Claimant contacted the new staffing company to seek other assignments, but was told that if he accepted another assignment he would not be recalled to the air conditioner manufacturer. Claimant stated that he would wait to be recalled.

Held: Claimant's job was not a temporary position. He did not obtain the job through the staffing company, but was hired directly. The staffing company merely provided payroll service for the manufacturer. Claimant had no obligation to seek other work through the staffing company. No offer of work made by the staffing company was suitable under the restriction of not being able to return to his previous employment. Claimant was laid off for lack of work. He did not voluntarily quit.

Result: Benefits allowed under Section 2-406.

01 AT 02841

Facts: Claimant was employed as a temporary on-call instructor filling in for permanent instructors who are absent from work for various reasons. Claimant worked only on as needed basis but was limited to working 1000 hours per calendar year. When claimant filed for benefits he had exhausted his 1000 hours for the calendar year 2000. He worked intermittently in 2001.Claimant was aware of the terms of the contract when he accepted the job. Claimant has not indicated he did not desire permanent employment or that he would not accept further employment after the end of the temporary contract.

Held: Claimant is unemployed as defined in Section 1-217. He is unemployed involuntarily because no work is available to him, either because no instructors are absent or because he has worked the maximum amount of hours permitted. Therefore, he has been constructively discharged. *Wright v. Edwards* does not apply because in that case the claimant was hired to substitute for a particular person for a specified period of time and had indicated that she did not desire and would not accept further employment after the temporary contract ended. Section 2-209 regarding school employees who are between terms does not apply because it applies only to the period of time during a scheduled break between school terms.

Result: Benefits allowed.

00 AT 04280

Facts: Claimant was employed as a temporary employee for a temporary help firm. His last assignment ended due to a lack of work. Claimant contacted his employer to collect his check. He did not advise the employer that he was ready for assignment because he did not know it was necessary and he was scheduled to have surgery the next week. He is eligible for reassignment.

Held: Claimant's employment ended due to lack of work. He contacted his employer and remains eligible. The fact that he could not accept another assignment due to medical reasons does not disqualify as his separation was due to lack of work.

Result: Benefits allowed.

97 AT 3498 BR

Facts: Claimant was terminated by the employer to whom she had been assigned by a temporary agency because of a lack of work. Claimant did not contact the agency for further assignments. Claimant said she was not aware she was required to report back to the agency since she was seeking permanent employment.

Held: There is no evidence claimant was advised of her obligation to contact the agency on completion of her assignment and she might be denied unemployment benefits if she did not do so.

Result: Benefits allowed.

95 AT 5813 BR

Facts: Claimant was hired by a nursery, then leased by an agency. The business was sold and claimant was told he was no longer needed.

Held: Claimant was discharged due to a lack of work.

Result: Benefits allowed.

95 AT 6144 BR

Facts: Claimant was hired as a temporary worker. She terminated an assignment due to illness. Claimant contacted the employer to notify of her absence due to illness. When she went to the temporary agency to look for an assignment nothing was available.

Held: Claimant was separated due to a lack of work.

Result: Benefits allowed.

90 AT 8317 R BR

Facts: Claimant worked on a 45% commission. He had not had any work for a week so he took a week of vacation of which the employer was aware. When claimant returned he was advised work was slow and the employer was going to do most of it himself. Claimant assumed that he was discharged and left. There was no agreement when he was hired that he would work a certain number of hours. He worked only when work was available. The employer alleges that claimant quit and that there was work available.

Held: Claimant was laid off for lack of work. Claimant's assumption was logical. There was no misconduct.

Result: Benefits allowed.

90 AT 8267 R BR

Facts: Claimant worked for a temporary employment service. She told her supervisor that her husband was being transferred, but that she was willing to stay and complete her assignment. Claimant's husband moved on Sunday and claimant's supervisor at the place where she worked told her the next day that her job would end in two weeks. Claimant notified her employer and was not offered another assignment. Claimant moved.

Held: Claimant completed the temporary assignment and was not offered another. She then moved. She did not voluntarily quit. She was discharged for lack of work.

Result: Benefits allowed.

90 AT 3994 BR

Facts: Claimant was employed as a general laborer. He worked on an out of state job on December 27 and 28. He and two other workers returned home on December 29 for an appointment for unemployment benefits for which they had earlier filed. The two other workers, who were the employer's sons, told claimant they would see him on January 2 to complete the out of state job. On December 29, it was raining and claimant's employer said he need not call in. His spouse was told by the employer and his two sons that they would see claimant on January 2. On the Tuesday, the employer gave claimant his final check and claimant was asked to resign for not showing up for four days. Claimant refused to sign.

Held: Claimant was discharged. He was usually picked up by the employer and had been instructed to return on January 2. No misconduct shown.

Result: Benefits allowed

90 AT 686 BR

Facts: Claimant was a truck driver. He was granted two weeks off per his request. He was instructed to contact the employer on return. When he reported he was told that he would be called when work was available. He was never called. The employer accused claimant of being unreliable; that several times he did not report as expected and the employer had to pick up his truck. He replaced claimant because he did not know when claimant would return and he needed someone immediately.

Held: The employer granted claimant two weeks off. There is no evidence that claimant was warned he would be replaced if he took the time off. There is no evidence that claimant was ever warned or reprimanded for the other allegations. No misconduct shown.

Result: Benefits allowed.

89 AT 9180 BR

Facts: Claimant worked for a temporary employment service. She was told by the manager at the jobsite that there was only one more week of full-time work available. Claimant called her employer and said she wanted to leave the assignment a week early. Claimant was told there were no other full time assignments available. Claimant has maintained contact to ask about further assignments. The employer states that claimant is still carried on their records as available for assignment.

Held: Claimant was not an employee of the company where she worked, but of the temporary agency. There is no separation from employment. Claimant is laid off for lack of work, pending future assignment.

Result: Benefits allowed.

89 AT 05290 BR

Facts: Claimant was a display assistant. She quit work due to pregnancy and returned four months later to seek reemployment. She had not been promised reemployment. When she reapplied, no work was available. Claimant had requested and been granted maternity leave, but the personnel department failed to do the proper paperwork to make it official. Claimant told no one that she would not return. She told the employer at the time of applying for reemployment that her husband might be transferred in the future.

Held: Claimant followed the proper procedure required to protect her employment. She was involuntarily separated from work. No misconduct.

Result: Benefits allowed.

89 AT 02933 BR

Facts: Claimant was hired by a temporary service employer to work as a sheet metal worker for another employer on a contract basis. Claimant was injured in a car accident. Claimant called the contractor to report the absence. Claimant was told he would need a medical release to return to work. Claimant was released and again contacted the contractor. Claimant was told that the employees hired through the temporary service had been terminated. Claimant only applied with the temporary service to get work with this contractor. This had been his only assignment. All his contacts were with the contractor. He only called the temporary service to report hours worked to get paid. The employer only got information regarding the claimant from the contractor.

Held: Claimant took proper and adequate steps to protect the employment relationship. When claimant reported back after his release he was terminated for lack of work. There was no misconduct.

Result: Benefits allowed.

89 AT 367 BR

Facts: Claimant lived in Moore but worked in Edmond. She had a full time job with a grocery and a part time job at a liquor store. In late November she was told by the full time job that she would be laid off by the end of the year. Without the full time job it was not economically possible to remain in the part time job because of the distance. Claimant agreed to work through the New Year to help the employer. Claimant's last day of work at the grocery was December 26 and she filed a claim the next day against the grocery. Claimant worked part time through December 31 at the liquor store.

Held: The grocery was the last employer because the separation constructively occurred in November when she was given notice.

Result: Benefits allowed.

LICENSES, FAILURE TO SECURE OR LOSS OF

When an employee is required to have a license to perform the duties of his job, the failure to secure the license, maintain or renew it, or to avoid loss of the license is an act detrimental to the employer's interest and is willful misconduct. The failure to obtain and keep a license makes an employee unable to perform the duties of his job and of no use to the employer. When the loss of a license occurs because of willful or unlawful acts of the employee even while on personal time and renders the employee unemployable, such as loss of a driving license for a truck or delivery driver, it is willful misconduct. If an employee fails to renew a license by ignoring the requirements and not taking steps to renew the license in a timely manner, it is misconduct. Loss of or failure to renew a license through mistake or ignorance is not willful and therefore, not misconduct. The failure of an employee to be insurable because of his driving record is willful misconduct if driving is a prerequisite to the job. If an employee attempts to acquire the license, but is unable to, such as in passing a certification test, the employee may be unemployable, but there is no willful misconduct.

LICENSES, FAILURE TO SECURE OF LOSS OF

Case Law

Tulsa County/City Library System v. Pack, et al., No. 69,088 (Okla. Ct. of App. 11-1-83)

Facts: Claimant's license was suspended for DUI. He obtained a permit allowing him to drive to and from work and during work hours. Claimant's employer received a notice from its insurance company saying they could not cover claimant because his license had been cancelled. Claimant was discharged, but went and paid a fee to have his license reinstated.

Held: The Appeal Tribunal reversed the Commission and allowed benefits. The decision was upheld by the Board of Review and the District Court. The Court of Appeals held that there was no evidence that claimant knew that he was driving illegally. No misconduct shown.

Result: Benefits allowed.

Case Applications

96 AT 6401 BR

Facts: Claimant was off work for four months due to an automobile accident. When he was released for work he did not have his driver's license. The employer asked him to secure verification that his license would be returned. He never did. Claimant was discharged.

Held: It was claimant's responsibility to secure a license. He showed a disregard of his duty to his employer. Misconduct shown.

Result: Benefits denied.

90 AT 7092 BR

Facts: Claimant was unable to renew his liquor license due to a previous felony conviction. Claimant asked for another job from the employer but was denied. Rather than be fired he resigned.

Held: Claimant was required to have a license to perform his job. Failure to secure a license due to his own actions was misconduct.

Result: Benefits denied.

90 AT 8802 BR

Facts: Claimant was a per diem court reporter and had to pass a shorthand test to continue with the employer. She tried several times but was unable to pass the test.

Held: Claimant's inability to meet the employer's standards was not misconduct.

Result: Benefits allowed.

90 AT 9188 BR

Facts: When claimant was hired she was told that FDIC regulations required all bank employees to be bondable. The bonding company refused to secure the claimant. The bank gave the claimant two weeks to convince the bonding company to reconsider. Claimant became hospitalized and unable to pursue the bonding.

Held: Claimant was aware of the requirement and it was her responsibility to take care of the requirement. Misconduct shown.

Result: Benefits denied.

90 AT 7059 BR

Facts: Claimant was a truck driver. He was in an accident in his own vehicle and was charged with driving without a license and DUI. Claimant was allowed to work in the employer's warehouse until the outcome of his license revocation hearing. After one month and no news, the claimant was discharged.

Held: Failure to maintain a license left the employer with no choice but to discharge the claimant. Misconduct shown.

Result: Benefits denied.

89 AT 6557 BR

Facts: Claimant's license was suspended and he had no knowledge of it. He had obtained an attorney to help him with a citation he received in his personal vehicle and the attorney told him the problem was solved. The DOT mailed a notice of the suspension to claimant's old address.

Held: There is no evidence that claimant knew his license was suspended. There is no evidence of willful misconduct.

Result: Benefits allowed.

88 AT 12403 BR

Facts: Claimant was an RN. While on medical disability leave the claimant failed to renew her license and could no longer be considered an RN.

Held: Claimant's separation from employment was a direct result of her own lack of appropriate action. Misconduct shown.

Result: Benefits denied.

82 BR 1031

Facts: Claimant was employed as a teacher but only held a temporary teaching certificate. When the certificate expired she was required to present evidence of having completed eight hours of college credit toward the requirement for a standard certificate in order to obtain a new temporary one. She had completed twelve hours but did not qualify for a second temporary certificate. She applied for a provisional certificate. The school board asked her to resign and when she refused, she was fired. The provisional certificate was later approved.

Held: Claimant did everything possible to obtain certification. No misconduct.

Result: Benefits allowed.

NEGLECT OF OR INATTENTION TO DUTIES

This section includes errors in handling money, performing duties, excessive personal contacts on the job, failure to improve after counseling, failure to maintain equipment, leaving the assigned work area, and sleeping on the job. Errors in handling money and performing duties are misconduct only if the employee has demonstrated the ability to perform the job, has had adequate training and experience and the errors occur as a result of a level of negligence that can only be determined to show a substantial disregard for the interests of the employer. Excessive personal contacts on the job can include personal phone conversations, visits, and any number of personal distractions that prevent the employee from doing his assigned tasks. The key to this infraction is whether the employee is made aware of the policy and rules and is given a chance to correct the situation. Failure to improve after counseling for any infraction can be found to be willful misconduct if the employee has shown the ability to do the job properly but continually fails to correct the problem after repeated counseling. Failure to take care of and maintain company property is willful misconduct if the maintenance is within the employee's job description and expertise. Ignoring safety rules enacted to protect the employer's property is also a willful violation if it can be shown that the employee had knowledge of and training in those rules. Willful and deliberate destruction of company property is misconduct. If an employee leaves the assigned work area without the approval of the employer or without justification, and especially if he repeatedly does it after counseling, it is willful misconduct. Sleeping on the job when not on an authorized break is willful misconduct, unless it is the result of a verified illness.

NEGLECT OF OR INATTENTION TO DUTIES

Errors in Handling Money

Case Applications

97 AT 0555 BR

Facts: The employer alleges that claimant exceeded the $750 limit in purchasing materials or items for individual projects. Claimant says he did not have any training in purchasing and any mistakes were unintentional. The employer states that claimant should have known the rules as a fourteen-year employee.

Held: The violation was not intentional; therefore, no misconduct is shown.

Result: Benefits allowed.

95 AT 9711 BR

Facts: Claimant's continued negligence and disregard for the employer's interest caused a loss of over $1300.00. Claimant was warned verbally and in writing over two years. Claimant attributed his inability to meet the employer's standards to his age and physical condition. There was no medical evidence to support this allegation.

Held: Claimants negligence rose to the level of misconduct.

Result: Benefits denied.

93 AT 12696 BR

Facts: Claimant violated a company rule against borrowing money from the store funds by failing to deposit a check written for a cash loan. The check was dated one day prior to the audit. The claimant denied purposely withholding the check from deposit stating that it was not deposited due to an oversight. Claimant was employed nine years with no other problems until this. The employer's rules of conduct prohibited borrowing money from store funds, which included IOU's and personal checks held for future deposits or redemption.

Held: While the claimant did violate the rules of the employer, this was an isolated single incident in nine years of employment and does not measure to misconduct.

Result: Benefits allowed.

79 BR 1041

Facts: Claimant was a checker at a grocery store. She was fired for two instances of selling items and failing to ring them up. Claimant said she had no knowledge of the two instances, but often when people wished to purchase a small item and the register was in use for another customer the money would be accepted and the transaction rung later. This was common practice in the store.

Held: Claimant may have used poor judgment, but the evidence does not indicate that she acted in a willfully improper manner.

Result: Benefits allowed.

Cross-reference: See also Illegal Acts, 87 AT 11762 BR

NEGLECT OF/INATTENTION TO DUTIES

Errors in Performing Duties

Case Law

The Nordam Group, Inc. v. Bd. of Rev. of OESC and Randy Wright, 925 P2d556, 1996 Ok 110 (Okla. 1996)

Facts: Claimant was responsible for shipping parts manufactured and sold by Nordam for use in the aviation industry. Certain parts were shipped by the claimant, then returned. In the shipment was one part that claimant was told was rejected and not to be included in the previous shipment. Claimant shipped the part again. When this was discovered, the shipment was returned. Claimant said he was not aware or provided with paperwork stating that the shipment required FAA specification or inspection.

Held: No willful misconduct. The District Court affirmed the Board of Review.

Result: Benefits allowed.

Morse v. Oklahoma Osteopathic Hospital et al., CJ-86-6835 (Tulsa Co. D. Ct. 5-27-87)

Facts: Claimant was an RN assigned to pediatrics. She was discharged for accumulating disciplinary points in excess of the employer's maximum allowable nine points involving neglect of patients. Her termination stemmed from her failure to promptly answer an alarm involving an infant patient who needed aid in ICU.

Held: Claimant was guilty of neglect of duty. Misconduct shown.

Result: Benefits denied.

Case Applications

00 AT 4493 BR

Facts: Claimant was employed as a bookkeeper for about three months. Claimant was discharged for excessive tardiness, no call/no show absences and failure to get her work completed. The corporate office called the manager to let her know that claimant had not provided the necessary information. As late as over one month later, the work still was not completed. The employer had even hired another bookkeeper to assist the claimant. They were to work 8-5 but claimant was late every day. She was counseled and warned. Her start time was changed to 8:15 on weekdays and 8 a.m. on weekends. The manager called the claimant at home on March 31 and left a message reminding claimant to work the next day, a Saturday, to complete the end of the month data. Claimant did not show. She worked on Sunday but left early without finishing her duties. On Monday she arrived late and was discharged.

Held: Misconduct shown.

Result: Benefits denied.

98 AT 06032 BR

Facts: Claimant was discharged for mistakes and customer complaints. Job performance errors included failure to collect a security deposit from a new customer, and losing a customer's check used to pay his bill. A few mistakes were due to the confusion caused by loud disruptive customers.

Held: Mistakes do not constitute misconduct. There is no evidence that claimant's actions were intentional.

Result: Benefits allowed.

96 AT 5962 BR

Facts: Claimant was responsible for stopping traffic at a construction site. Claimant was not watching oncoming traffic and did not stop a semi truck resulting in a collision between the truck and a scraper on the jobsite. The scraper was completely dependent on the flagman to control traffic.

Held: Claimant did not intentionally cause the accident but his negligence caused damage to both vehicles and showed a disregard of the employer's interest.

Result: Benefits denied.

96 AT 5197 BR

Facts: Parents or guardians of patients in the group home where claimant worked were to meet with and approve any nurse assigned to that home. Claimant assigned nurses three times that had not been approved. Claimant was discharged for not following the guidelines set out by his employer.

Held: Claimant exhibited a deliberate disregard of the employer's interest.

Result: Benefits denied.

96 AT 1028 BR

Facts: Claimant was fired when he refused to assist the hospital risk manager in erecting barricades to keep hospital employees from parking in an area that was leaking oxygen.

Held: Claimant's conduct evidenced a negligence of such a degree to manifest a substantial disregard of the employee's duties and obligation to his employer. Misconduct shown.

Result: Benefits denied.

90 AT 5053 BR

Facts: Claimant had extended absences during business hours, failure to finalize client arrangements and contracts and excessive customer complaints over an extended period of time. There was no evidence that claimant was unable to perform the duties of the position. She was qualified, understood the responsibilities of her position and did improve temporarily after counseling.

Held: Careless negligence or continuing neglect of duty is misconduct. Claimant disregard of the employer's interest is misconduct.

Result: Benefits denied.

90 AT 1534 BR

Facts: Claimant was terminated for neglect of duty. Claimant was issued several verbal and written warnings about his failure to properly service his accounts.

Held: The Appeal Tribunal held that the claimant's termination was not due to inefficiency or inability, but was due to continued negligence. The Board of Review reversed stating that there was no evidence of deliberate violation of company policy. No misconduct shown.

Result: Benefits allowed.

NEGLECT OF/INATTENTION TO DUTIES

Excessive Personal Contacts on Job

Case Applications

96 AT 3137 BR

Facts: Claimant was discharged for excessive use of the telephone and because she brought her daughter to work with her after she had been told not to. Then employer had two witnesses to excessive phone use. Claimant was counseled about the excessive phone use but continued to use the phone.

Held: Claimant showed a substantial disregard for the employer's interests. Misconduct shown.

Result: Benefits denied.

87 AT 6048 BR

Facts: The claimant was put on a 45-day probation for talking on the phone for extended periods of time and had been warned that a violation would lead to discharge. Less than two months later the claimant used the phone for personal business for nearly half an hour. Claimant was discharged.

Held: Excessive personal telephone use is misconduct.

Result: Benefits denied.

86 AT 15200 BR

Facts: Claimant was discharged when he "talked back" to his supervisor when being reprimanded for excessive use of the telephone. On claimant's day off the employer answered five personal calls for the claimant.

Held: Claimant had been told to limit personal phone calls to personal time. He did not and misconduct was shown.

Result: Benefits denied.

NEGLECT OF/INATTENTION TO DUTIES

Failure to Improve After Counseling

Case Applications

90 AT 8294 BR

Facts: Claimant worked as a receptionist for the employer on a temporary basis for six weeks and did well. She was hired as a permanent employee and did satisfactory work for several months. Her performance began to deteriorate resulting in complaints from her coworkers and customers. Two warnings were given and her performance improved. Then it declined again, so claimant was discharged.

Held: Claimant was given sufficient warning and opportunity to correct the deficiencies in her performance. She was able to do the job; failure to do it was misconduct.

Result: Benefits denied.

90 AT 3105 BR

Facts: Claimant was discharged for poor work performance after being warned about her actions and unacceptable behavior on at least four different occasions. Claimant was repeatedly warned about her lack of respect toward clients and the firm's attorneys and her poor attitude when given assignments as well as her failure to complete routine job assignments such as proofreading briefs, and personal phone calls during business hours. Claimant continued such actions after being counseled and warned.

Held: Claimant engaged in willful, wanton, and deliberate behavior disregarding the employer's best interest. Misconduct shown.

Result: Benefits denied.

86 AT 4558 BR

Facts: Claimant was the assistant manager of a restaurant. He had been counseled for failing to execute his duties, gambling, watching TV, reading newspapers and refusing to assist employees under his supervision. In the final incident claimant was discussing point spreads. Claimant was discharged.

Held: Claimant was aware that his gambling activities were unauthorized while on duty and were not in the employer's best interests.

Result: Benefits denied.

Cross-reference: See also Inefficiency/Inability to Perform Duties, 96 AT 7803 BR

NEGLECT OF/INATTENTION TO DUTIES

Failure to Maintain Equipment

Case Applications

90 AT 0603 BR

Facts: Claimant was supposed to have repaired a machine before he left work for the day. The general manager made an inspection of the machine after claimant left and discovered serious errors in the work. The claimant was discharged. Claimant alleges that he did not have correct tools to fix the machine, and was going to report it to management the following morning. He felt he did a great job since he was doing the work of two people.

Held: There was no evidence that claimant had ever been counseled or warned about his work performance during his one and a half year's service. This was an isolated incident. There was no willful intent to harm the employer.

Result: Benefits allowed.

NEGLECT OF/INATTENTION TO DUTIES

Leaving Assigned Work Area

Case Applications

90 AT 1512 BR

Facts: Claimant was discharged for spending an excessive amount of time in the employee break room. Claimant was counseled three times. The last time claimant was warned that if he was late to work or missed time without a sufficient excuse in the next ninety days he would be fired. Claimant evidently improved after each counseling because no action was taken against him. The employer said he had a videotape of claimant in the break room. Claimant brought a witness who testified that it was the witness not the claimant in the
video.

Held: There was no evidence of willful disregard of the employer's interest. Claimant made an effort to improve after counseling. No misconduct.

Result: Benefits allowed.

NEGLECT OF/INATTENTION TO DUTIES

Sleeping on the Job

Case Law

Calvin v. Firestone, et al., CA-65093 (Okla. Ct. of Appeals 5-23-87)

Facts: Claimant was not feeling well and was taking an over-the-counter flu medication which allegedly made her drowsy. She went to sleep on her lunch break, overslept and was fired.

Held: There is a company policy against sleeping on the job. Her actions constituted a willful disregard of the employer's best interests and of claimant's duties and obligation to the employer.

Result: Benefits denied.

Castello v. Guthrie Greenhouses, Inc. et al., No. (Payne Co. D. Ct. 3-6-87)

Facts: Claimant had been warned and counseled about not keeping records accurately and sleeping on the job. When he was found sleeping on the job again, he was fired.

Held: Claimant knowingly and intentionally failed to heed the employer's warnings. His conduct was in disregard of his duty to his employer.

Result: Benefits denied.

Case Applications

98 AT 0191 BR

Facts: Claimant was fired for sleeping on the job. It had happened before and claimant had been reprimanded. Claimant testified that he was on one of two fifteen-minute breaks that he was allowed when he was caught sleeping. The employer said claimant violated company policy but no policy was offered as evidence. The employer did not dispute that claimant was on break.

Held: It was not unreasonable for claimant to feel like he could use his break anyway he wanted. No misconduct shown.

Result: Benefits allowed.

97 AT 8425 BR

Facts: Claimant was allowed a thirty minute unpaid break. She took a twenty-minute nap because she had been working double shifts for three days. When she reported it, she was terminated.

Held: Claimant believed herself not on duty since she was not paid for her break. No evidence of willful misconduct.

Result: Benefits allowed.

OFF DUTY MISCONDUCT

Misconduct occurring while the employee is on personal time and which is not connected to the work, may not be disqualifying. Such behavior would be disqualifying if it affected the employee's ability to report for work or if the nature of the misconduct and the job are such that the employee's behavior causes damage to the interest of the employer. Generally, the employer does not have the authority to regulate behavior of the employee while not on duty. However, if the employee is engaging in misconduct while off duty but while on the employer's premises, then willful misconduct is established. Off duty misconduct toward another employee connects the misconduct to the work and affects the morale of the workplace, and therefore qualifies as willful misconduct.

Public and state employees are held to a higher standard of conduct. They must not engage in any conduct unbecoming a state or public employee, whether or not on duty. It is misconduct to use one's position as a public employee to obtain advantages to which the employee is not otherwise entitled. Even though misconduct may occur on personal time, the fact that a public employee is involved adversely affects the legitimate interests of the employer and is willful misconduct.

See also Drugs.

OFF DUTY MISCONDUCT

Case Applications

90 AT 7282 BR

Facts: The employer asserts that claimant was discharged due to failure to pay her debts and for being convicted of a crime while off duty. The debts were incurred the previous year and earlier. The employer received numerous calls from claimant's creditors and claimant was reprimanded twice. Claimant had been convicted of shoplifting the previous year, but the employer did not learn of it until the current year as well as three arrest warrants for unpaid traffic tickets. Claimant asserts that she told the employer of the conviction when it happened and she did not know of the warrants.

Held: The events occurred a substantial time before claimant's termination. The employer was aware of the debts and conviction and had acquiesced. There was no misconduct unknown to the employer and it was therefore accepted by the employer.

Result: Benefits allowed.

90 AT 7180 BR

Facts: Claimant signed a last chance agreement with her employer stating she would refrain from any future use, on or off the job, of any illegal drug or alcohol. One year later she had a positive drug test and was discharged. There was no evidence presented as to the procedures used in the drug test or of the chain of custody. Claimant said she was taking Tylenol 3 and anxiety medicine and had one or two cans of beer each night the week before the test. There was no evidence of job impairment.

Held: Claimant took prescribed medication and used a very moderate amount of alcohol off work. The employer cannot dictate the private lives of his employees when no illegal activity is involved. Any agreement to the contrary is invalid. No misconduct.

Result: Benefits allowed.

87 AT 5907 R BR

Facts: Claimant was discharged after he came to the employer's business after hours. He had been drinking and used abusive language to a fellow worker. The employer asserts that claimant was a complainer and did not care for his truck. Claimant stated he had been to a dinner of pizza and beer and just stopped by to talk with the dispatcher. The day dispatcher with whom he did not get along was there with his daughters. The claimant used obscene language toward one daughter and nearly knocked over the chair of the other daughter. Claimant apologized, but was later discharged.

Held: Claimant admitted drinking and using inappropriate behavior. Misconduct shown.

Result: Benefits denied.

87 AT 3446 BR

Facts: Claimant was a police department employee and had a police ID badge. While off duty, he used his badge to try to gain entrance to a club that had been closed for the night. He was denied entry, argued with the club employee and police were called. Claimant left but the police found him a few blocks away. He failed a Breathalyzer test.

Held: A public employee has an obligation to set a good example and is held to a higher standard than an ordinary citizen. Claimant was discharged for misconduct.

Result: Benefits denied.

82 BR 1163

Facts: Claimant and his wife continually phoned and harassed a black female who also worked for the employer. The employer met with the claimant several times to resolve the matter. Claimant kept making the calls. After a leave of absence the employer met again with the claimant, but the claimant refused to stop harassing the other employee. He was given one day to reconsider and he refused. He was then asked to resign.

Held: Claimant was discharged. His conduct outside of work affected the other employees and was disruptive to employee morale. It adversely affected the work performance and atmosphere. Misconduct shown.

Result: Benefits denied.

PERSONAL APPEARANCE

An employer has the right to enact reasonable rules of personal appearance of its employees, including personal hygiene, dress and grooming. The continued violation of those reasonable rules after counseling is determined to be a willful and deliberate violation of company rules and is misconduct connected to the work.

PERSONAL APPEARANCE

Case Law

Lleigh, Ltd. v. True et al., CJ-86-2568 (Tulsa Co. D. Ct. 4-87)

Facts: Claimant was employed in a dress shop. There had been a number of complaints against the claimant and she was guilty of a poor appearance. She had received three written warnings regarding her appearance, mistakes and her disregard of rules. She was discharged.

Held: Misconduct shown.

Result: Benefits denied.

Case Applications

96 AT 2285 BR

Facts: Claimant was discharged because of an offensive smell. He was counseled and even sent home to bathe with no better results. Several coworkers complained of the smell.

Held: Claimant violated the standard of behavior that an employer has a right to expect of employees.

Result: Benefits denied.

OAT 81 1114

Facts: Claimant refused to shave his beard and was discharged. Claimant asserts there was no written policy against facial hair. He worked outside and claimed the beard protected him against the weather. The magazine published by the company showed other employees with beards. Claimant said he was singled out.

Held: Claimant was not guilty of misconduct. Reasonable rules of employment must apply to all.

Result: Benefits allowed.

80 BR 689

Facts: Claimant's employer forbade beards. This was to comply with OSHA regulations. Claimant began growing a beard and was told to shave. He was suspended for ten days when he refused. He was discharged after his continued refusal.

Held: Claimant violated the employer's reasonable rules. Misconduct shown.

Result: Benefits denied.

POLYGRAPH TEST, FAILURE TO PASS OR REFUSAL TO TAKE

Polygraph examination results are not admissible in court and are not sufficient, absent corroborating competent evidence, to support the allegations of misconduct. Failure to pass a polygraph is not misconduct. Refusal to take a polygraph is not misconduct unless it is part of the original hiring contract and the employee is aware of the potential future requirement. If it is made a part of the hiring agreement at a later date, the employee must be made aware of the requirement and failure to protest the requirement at that time may result in the assumption that the employee consents.

Cross-reference: Quit for Refusal to Take Polygraph

See: Polygraph Protection Act

POLYGRAPH TEST

Failure to Pass

Case Law

Clint Garret and Ben Curtis dba J. Food Mart v. Bd. of Rev. of OESC, OESC and Jm. Mattox, C-87-226 (Dist Ct, LeFlore Co, 7-13-87)

Facts: Claimant was discharged because the polygraph test indicated that she had taken inventory home without paying for it. She had not done this.

Held: There was no proof of misconduct.

Result: Benefits allowed.

Case Applications

84 At 04867; 84 BR 1549

Facts: Claimant was discharged for dishonesty after being given a polygraph test. Claimant allegedly admitted to the polygraph operator prior to the test that she had eaten $1.00 worth of food per week during her employment without paying for it. Claimant denied taking food or stealing merchandise. She said the supervisor never advised her of the reason for her discharge.

Held: Allegations unsupported by competent evidence by those personally familiar with the actual situation are insufficient to sustain the burden of proof. The employer's witness relied on the polygraph report. The examiner was not present so the report was hearsay.

Result: Benefits allowed.

83 AT 7641; 83 BR 2012

Facts: Claimant was discharged for failure of a polygraph test given when money was found missing from the owner's desk.

Held: Polygraph results are not admissible in court and a discharge based on those tests is a discharge not for misconduct unless corroborated by other competent evidence. The employer did not accuse the claimant of stealing the money and did not prove misconduct.

Result: Benefits allowed.

POLYGRAPH TEST

Refusal to Take

Case Law

Virginia B, No. 14470l-C, MC-255.1-389, Virginia Employment Comm. 2-12-81, Employment & Training Administration Report 332-47 (3-1981)

Facts: Claimant was one of twelve employees working on the day a shotgun was found missing from a police vehicle in the employer's shop. Claimant cooperated with the police and allowed a search of his home, but refused to take a polygraph test. Claimant was suspended. He later agreed to take the test, but failed to show for the exam and then notified them he would not take it since he was the only employee required to do so.

Held: Polygraphs were not included in the original hire agreement. Failure to take the test was not misconduct.

Result: Benefits allowed.

Case Applications

83 AT 5085; 83 BR 1340

Facts: Claimant was discharged for refusing to take a polygraph test. The requirement was not part of the original hire agreement, but had been made a part of the employment policy one year before the final incident. Claimant knew of the requirement.

Held: Claimant was aware of the policy and continued to work under the terms of the policy. Refusal to take the test was a willful violation of the employment agreement.

Result: Benefits denied.

79 AT 8532; 80 BR 41

Facts: Claimant was asked to take a polygraph and agreed. The results were inconclusive and he refused when asked to take another. He was discharged.

Held: Unless it is shown that taking a polygraph test is part of the terms of hire, then the refusal to take the test is not misconduct.

Result: Benefits allowed.

79 AT 1033; 79 BR 954

Facts: Claimant's store was purchased by new owners, who had a policy that all employees are required to take a polygraph when requested to do so. This was not initially mentioned to claimant. After six months claimant was told about the policy and that she would have to take one. Claimant refused. The owner's wife said claimant would not be required to take this one, but if any future incidents occurred she would have to take it. When cash shortages occurred, all employees were asked to take a polygraph. Claimant quit rather than take it. The owner asked her to return and she did; then claimant was told that to continue her employment she would have to take the test. She refused and was discharged.

Held: If an employee is aware of a requirement, then it is a reasonable rule of employment, especially if they indicate expressly or impliedly, their consent. If the employee states they will never submit, it does not become part of the employment agreement and cannot be used as misconduct. Here there was a material change in the employment agreement. However, the claimant implied agreement to future exams, so subsequent refusal was misconduct.

Result: Benefits denied.

RELIGION

If an employee makes an employer aware of restriction upon work hours or other conditions of work for religious reasons, the refusal of the employee to perform duties or work days which violate those religious beliefs is not willful misconduct connected to the work. The key is that the employee must have made the employer aware. If time off is desired, an employer is only required to make reasonable accommodation to the employee's religious beliefs, but the employee must also act reasonably by giving adequate notice to the employer of the leave request. Further, the restrictions must be based on the tenets and requirements of the religion, not just upon the personal desire of the employee.

RELIGION

Case Applications

84 AT 9078; 84 BR 2448

Facts: Claimant was discharged because he would not work on Sunday due to his religious beliefs. Two written warnings had been issued to him concerning his refusal to work.

Held: The Supreme Court has held that the eligibility provisions of unemployment law may not be applied so as to constrain a worker to abandon his religions conviction affecting the day of rest. Claimant's conscientious religious scruples do not act as a bar to benefits.

Result: Benefits allowed.

82 AT 4760; 82 BR 6596

Facts: Claimant was discharged for failing to wear the proper uniform to work although he was warned twice that he must do so. New uniforms included a red apron. Claimant's father had recently died and according to claimant's religious beliefs no red should be worn for a period of time. Claimant did not tell the employer about his beliefs.

Held: An employer cannot make arrangements if they do not know about the beliefs. The claimant willfully refused direct orders. Misconduct shown.

Result: Benefits denied.

81 AB 143

Facts: The employer twice posted a calendar for employees to schedule their vacations. Each time the claimant did or said nothing and his vacation was scheduled for him. Thereafter, claimant asked to have a particular week off for religious reasons. He was denied and told he was given ample time to respond. He did not show up for work and was discharged.

Held: Claimant was given a chance to schedule his vacation according to his religious services and did not. This was a willful violation of the employer's expected standards of behavior and was misconduct. Honoring claimant's request would have caused undue hardship on the rest of the employees.

Result: Benefits denied.

80 AT 6634; 80 BR 1508

Facts: Because of her religious beliefs, the claimant was opposed to working on Sunday. For a while this belief was honored by the employer. Then the employer decided that claimant should begin working on Sundays. Claimant refused and was discharged.

Held: Because the employer honored the claimant's beliefs for a time, changing her to working on Sundays was a violation of her contract of hire. No misconduct.

Result: Benefits allowed.

76 AT 4098; 79 BR 1110

Facts: Claimant asked for the Saturday off before Easter to prepare lamb for Sunday dinner. Claimant assumed he would have the day off since his requests were honored in the past. Claimant was told he did not have the day off and was supposed to work. Claimant said he was taking the day off and it was understood that if he left he would be fired.

Held: The desire to cook lamb was a personal desire, not religious. There was no dogma of religion requiring claimant to not work on Saturday. His failure to report to work was a willful act of misconduct.

Result: Benefits denied.

Cross-reference: See also Absenteeism, Personal Illness, 87 AT 11971 BR; and Attitude, Agitation of Other Employees, 79 AT 6155; 79 BR 1259.

SAFETY VIOLATIONS

The employer has a valid interest in a safe and accident-free workplace. Consistent failure to abide by safety rules and regulations of the employer qualifies as willful misconduct if the employee has knowledge of and has been trained in those rules.

SAFETY VIOLATIONS

Case Applications

83 BR 903

Facts: Claimant worked for the employer clearing brush and trees under power lines. He was required to wear safety goggles when operating the chipper and a hard hat at all times. He was observed violating the safety rules. He was warned that failure to comply would lead to discharge. He ignored the warnings and was fired.

Held: Consistent failure to abide by reasonable safety rules and policies constitutes misconduct.

Result: Benefits denied.

82 BR 373

Facts: Claimant was a machinist and was discharged because he refused to perform a job assigned to him by his supervisor. Claimant said he refused to perform the procedure because he felt the procedure was unsafe. He offered two alternative methods but the supervisor did not approve. The supervisor's method was the norm, but on the date of discharge, one of the machines was determined to be unsafe by OSHA.

Held: Claimant refused to perform the job for fear of injuring himself and others. The fear was justified. He was not terminated for misconduct.

Result: Benefits allowed.

79 AT 8351; 80 BR 48

Facts: Claimant was a structural iron worker. It had been raining at the job site. Claimant felt it unsafe to work. He presented a letter from the safety inspector on the job indicating the work could be hazardous on that day. Claimant was discharged.

Held: Refusal to work was justified under the conditions. No misconduct shown.

Result: Benefits allowed.

SEXUAL HARASSMENT

Sexual harassment of any kind, either by the employer or one of its employees, toward anyone is misconduct and prohibited in the workplace. This includes sexually suggestive language, jokes, or any unwelcome act or language. An employer who fails to take action to stop such behavior is found to condone and further such behavior, thereby creating a hostile environment for the victim. Any employee found to have sexually harassed another employee, and who refuses to stop such behavior or who has been made aware of a company's policy against sexual harassment, is guilty of willful misconduct connected with the work

SEXUAL HARASSMENT

Case Applications

92 AT 03164 BR

Facts: Claimant was the assistant manager and complaints were being made to management that he was putting his hands on the female employees. Claimant admitted his actions.

Held: Claimant had no reason to put his hands on the employees and did not stop when asked. Misconduct shown.

Result: Benefits denied.

THIRD PARTY DISTURBANCE

Behavior which disrupts the workplace and is caused by a third party known to or related to the employee is not necessarily misconduct per se. An employee cannot control the behavior of others. However, if the disruptions caused by the third party are caused by the actions of the employee at work, or in some cases, outside of work, then misconduct can be found. Use by a third party of the employer's assets and equipment to obtain benefit for an employee has been found to be willful misconduct.

THIRD PARTY DISTURBANCE

Case Applications

88 AT 9248 BR

Facts: The claimant was discharged for submitting a letter on the employer's letterhead which contained false information. The letter was requesting assistance for claimant. Claimant denied knowledge of the letter. Claimant's wife wrote the letter.

Held: The Appeal Tribunal reversed the Commission and allowed benefits. The Board of Review reversed and denied benefits holding that since the letter was written to benefit the claimant, claimant could not escape culpability. Misconduct shown.

Result: Benefits denied.

83 BR 2403

Facts: Claimant's husband had a problem with the claimant's manager. The husband was not an employee. He created a disturbance in the store embarrassing the manager and customers. Claimant was later discharged for misconduct.

Held: Claimant could not control the actions of her husband. No misconduct shown.

Result: Benefits allowed.

80 AT 9534; 81 BR 267

Facts: Claimant was at her place of employment while off duty when she was asked by a coworker to take the cash report to the office. She was accompanied by her boyfriend. While in the office she spoke with the employer about withdrawing from her pension/profit sharing plan that was being deducted from her check. She told the employer if it was too much trouble to forget it. The claimant's boyfriend stepped in and exchanged words with the employer. The employer felt intimidated and fired the claimant for letting her boyfriend interfere.

Held: Claimant was bound by her boyfriend's actions since he had implied the authority to represent her in her demands. Misconduct shown.

Result: Benefits denied.

UNINSURABLE DRIVER

As indicated previously, if driving is a prerequisite to employment and an employee renders himself uninsurable by his actions, then that employee is also unemployable. If the employee's own negligence has made him uninsurable then it is willful misconduct. If the employer has prior knowledge of the employee's driving record at the time of hire, then there is no misconduct, absent further acts by the employee to render himself uninsurable. Failure to comply with a reasonable request of the employer to comply with insurance requirements is also willful misconduct.

Cross-reference: Licenses

UNINSURABLE DRIVER

Case Applications

87 AT 3195 BR

Facts: Claimant had worked for the employer twice before. When claimant was hired again the employer knew about claimant's driving record. When the insurance company said they would not insure the claimant, he was fired.

Held: The employer knew about the claimant's driving record. There was no willful misconduct.

Result: Benefits allowed.

86 AT 8104

Facts: Claimant had a poor driving record and the employer's insurance refused to cover him. He was required to sign an exclusion form. Claimant's job duties were changed so he would not need to drive a car. Claimant refused to sign the form and to stop driving the company cars. The insurance company said the insurance for the whole fleet would be dropped if the exclusion was not signed. Claimant was fired.

Held: Refusing a reasonable request by the employer as in not signing the form is misconduct.

Result: Benefits denied.

82 BR 148

Facts: Claimant was discharged because the employer's liability insurance carrier would no longer insure him due to his poor driving record.

Held: The claimant's own negligence caused his uninsurable state. Misconduct shown.

Result: Benefits denied.

UNION ACTIVITIES

Membership in a union is not misconduct. Organizing employees in a union is willful misconduct if done by a management employee. Note that Oklahoma is now a right-to-work state, so decisions issued before the passage of this law may be invalid.

UNION ACTIVITIES

Case Applications

83 BR 2071

Facts: Claimant was vice president of group sales for the employer and received a number of benefits not enjoyed by other employees. He was terminated for participating in union activities.

Held: It is unfair to the employer for a member of management to be allowed to use his position to organize employees.

Result: Benefits denied.

79 BR 1175

Facts: Claimant was discharged for violating the employer's rules concerning union petitions. The union and employer state that claimant was made aware of the rule. Claimant said she was unaware of the rule and would not have done anything to jeopardize her job.

Held: The employer had put claimant back to work so her actions could not be considered to be misconduct.

Result: Benefits allowed.

VIOLATION OF COMPANY RULES OR POLICIES

Violation of company rules or policies is willful misconduct connected to the work if it can be shown that the rules are reasonable, the employee has been made aware of and trained in the rules and furnished a copy of the rules or had them made easily available to him. It is the burden of the employer to provide proof of the reasonableness of the rule, of the policy and that the employee was aware of the rules. An isolated incident of rules violation which is the result of poor judgment or ordinary negligence in a given situation, particularly when unusual circumstances are involved, will not be misconduct. Violation of the rules by a third party when not noticed or allowed by the employee is not misconduct.

VIOLATION OF COMPANY RULES OR POLICIES

Case Law

Anderson v. Fas-Trax Jiffy Stop et al., C-87-7 (Lincoln Co. D. Ct. 2-87)

Facts: Claimant was discharged for permitting her boyfriend behind the counter while handling company funds, which was against company rules. It was an isolated incident. Claimant did not invite him. She was counting money and not paying attention to where he was.

Held: There is no evidence of a willful disregard of the rules.

Result: Benefits allowed.

Case Applications

00 AT 2030 BR

Facts: The claimant was aware of a strict company policy that required employees to clock out when they left work and to get permission from the supervisor if it was not at the end of their shift. Claimant agreed that she was away from her workstation for approximately one hour without clocking out or contacting a supervisor. She had started her period and messed up her clothing. She looked for a supervisor in her area but no female supervisor or lead person was available. She was too embarrassed to go to a male supervisor. She left without clocking out and without permission and went to her car in the parking lot. When she returned she went directly to her own area and began working instead of reporting to a supervisor because there were too many people in the other areas and she was embarrassed because of the spots on her clothing.

Held: Claimant did break the rules, but it was an isolated incident, and claimant's actions were understandable. It did not rise to the level of misconduct as defined in *Vester.*

Result: Benefits allowed.

98 AT 1333 BR

Facts: Claimant was fired for trying to take a video tape from the store where he worked without paying the rental fee. Store policy prohibited removing any time from the store without first paying for it. The claimant stated he was not aware of the policy.

Held: Any reasonable employee would know not to remove an item without first paying for it. Misconduct shown.

Result: Benefits denied.

97 AT 5983 BR

Facts: Claimant and her husband received a mortgage loan from her employer. They were unable to make the payments and the loan went into default. The employer was forced to fire the claimant as prescribed by the Comptroller of the Currency's Office.

Held: The defaulted note was the only reason for discharge. There was no proof of misconduct.

Result: Benefits allowed.

96 AT 3490 BR

Facts: Claimant was employed for over fourteen years. During Christmas the claimant accidentally caught a customer's Christmas lights on his truck and pulled them off. The customer was not upset and claimant had a heavy delivery load, so he did not report the incident at the time. The next day, the customer turned in a claim for the lights and claimant was terminated for failing to report the incident.

Held: This was an isolated incident and does not rise to the level of misconduct.

Result: Benefits allowed.

96 AT 3227 BR

Facts: Claimant was aware he was not supposed to sell beer to anyone under 21. He had been warned twice that if it happened again he would be discharged. He was also told to check the ID of anyone he was unsure of. Claimant sold beer to a nineteen year old who the supervisor sent in as a test. Claimant did not check his ID.

Held: If claimant was unsure of age, he should ask for ID. Claimant negligence could have caused the employer to lose its liquor license.

Result: Benefits denied.

96 AT 3012 BR

Facts: Claimant was given a handbook covering the employment rules and policies. It was claimant's responsibility to review the manual. Claimant violated the policy that she should have known. The reasons for immediate dismissal included violation of commission policies and procedures, including fraud.

Held: Claimant followed a course of conduct which showed a disregard of the employer's interests or policies. Misconduct shown.

Result: Benefits denied.

95 AT 7780 BR

Facts: The claimant was discharged for ringing up a family member's purchase in violation of the employer's written policy. The claimant said he was aware of the policy but the policy was never enforced. At least twice claimant rang up family purchases with the manager's permission. The manager denied giving permission.

Held: If the claimant thought he was doing wrong he would not have done it in front of the manager. No misconduct shown.

Result: Benefits allowed.

90 AT 6409 BR

Facts: Claimant worked as a waitress for a restaurant for 23 years. A new owner took over and made policy changes and changed prices. Claimant sometimes forgot to follow new policies and used old prices. The employer argued that claimant was deliberately refusing to follow new policies and put additional butter on the plate of a customer because she knew the patron needed more butter. The new policy required that she wait till he asked for it.

Held: This was an isolated incident of mistake, not misconduct. Claimant acted in good faith.

Result: Benefits allowed.

87 AT 2618 BR

Facts: The employer's policy prohibited relatives from working under the same operations manager. The relative with the least seniority would be terminated. When two employees got married, the employer would try to transfer one. Claimant married a coworker, but they did not tell the employer or request a transfer. When the employer found out, claimant was discharged.

Held: Claimant's life away from work is of no concern to the employer without a showing that it affects the work performance. No misconduct shown.

Result: Benefits allowed.

Cross-reference: See also Inefficiency or Inability to Perform, *Clark v. WalMart Stores, et al.*, #71, 668(Okla. Ct. of App. 5-29-90); Errors in Handling Money, 93 AT 12696 BR; Drug/Alcohol, Intoxication on the Job, 90 AT 8804 BR; Dishonesty, Theft, 90 AT 8579 BR; Disruptive Behavior, 90 AT 4610 BR.

BURDEN OF PROOF/PROCEDURE

Case Applications

91 AT 9288 BR

Facts: See Sleeping on the Job

Held: Claimant has the burden of proof to prove that his being demoted due to sleeping on the job was unreasonable and that his leaving employment voluntarily was for good cause.

90 AT 5821 BR

Facts: See Inefficiency

Held: The employer did not meet the burden of proof to show that claimant was given warnings or told his job was in jeopardy.

89 AT 7666 BR

Facts: See Disobeying Orders

Held: The employer did not appear at the hearing. There was therefore no evidence to support the allegation of insubordination.

84 BR 1549

Facts: See Failure to Pass Polygraph

Held: Polygraph reports alone are not sufficient to establish misconduct.

80 AT 9940; 81 BR 69

Facts:

Held: Five days in jail resulting in missing work is excessive and amounts to misconduct.