

New York State Department of Labor

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NEW YORK STATE DEPARTMENT OF LABOR
UNEMPLOYMENT INSURANCE DIVISION
ADJUDICATION SERVICES OFFICE

July, 2013

INTERPRETATION SERVICE-BENEFIT CLAIMS
HEARINGS AND APPEALS
Referee Hearing, Right to

Delay in Discharge

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The fact that an employer waited a year after the final incident to discharge the claimant is not controlling as the employer waited until after the legal process ran its course to discharge the claimant for misconduct.

A.B. 564,093

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective May 26, 2011, on the basis that the claimant voluntarily separated from employment without good cause; disqualifying the claimant from receiving benefits effective May 26, 2011, 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 EPIC SECURITY CORP prior to May 26, 2011, cannot be used toward the establishment of a claim for benefits. The claimant requested a hearing. The Administrative Law Judge held a 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 February 21, 2012 (A.L.J. Case No. 012-01450), the Administrative Law Judge sustained the initial determination that the claimant voluntarily separated from employment without good cause, and overruled the determination that the claimant lost employment through misconduct in connection with employment. The claimant appealed insofar as the voluntary quit determination was sustained and the employer appealed insofar as the misconduct determination was overruled. Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant was employed as a security guard for eight years, until May 25, 2011. The claimant was aware that a security guard license issued by the State of New York was a job requirement. The claimant was arrested on May 2, 2010 for felony assault, an act committed while on the job. On May 24, 2011 the claimant pled guilty to assault in the second degree, a felony. He was sentenced to five years probation. Consequently, the State of New York would not renew the claimant's security guard license and the employer discharged the claimant.

OPINION: The credible evidence establishes the claimant was discharged as a result of a felony committed on the job during the course of employment. The claimant's plea of guilty conclusively establishes his guilt. The claimant's criminal act committed on the job is clearly misconduct in connection with employment.

The fact that the employer waited to discharge the claimant until after the legal process ran its course and the claimant could no longer work as a security guard in no way undermines the employer's position that the claimant was discharged for misconduct, and the claimant is disqualified from benefits on that basis.

DECISION: The decision of the Administrative Law Judge is modified as follows and, as so modified, is affirmed. The initial determination, disqualifying the claimant from receiving benefits, effective May 26, 2011, on the basis that the claimant voluntarily separated from employment without good cause, is overruled. The initial determination, disqualifying the claimant from receiving benefits effective May 26, 2011, 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 May 26, 2011, 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.

COMMENTS

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In the above matter the claimant was a security guard who while on duty assaulted someone in May of 2010. The claimant was arrested and charged with felony assault. In May of 2011 the claimant pled guilty to assault in the second degree, a felony. Once the claimant's guilt was established he was considered to have committed a criminal act on the job which is misconduct in connection with employment.

