

New York State Department of Labor

A-750-2148

A-750- 2148 Index 1165.1

1170.7

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

February, 2013

INTERPRETATION SERVICE-BENEFIT CLAIMS

Misconduct

Safety & Security

Neglect of Duty

Failure To Act

The claimant, a ground security coordinator for an airline, neglect of duty by failing to investigate a potential security breach at an airport, thereby jeopardizing the safety and security of the airline's crew and passengers has committed an act of disqualifying misconduct.

A.B. 563,487

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits effective September 30, 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 AMERICAN AIRLINES INC prior to September 30, 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 on behalf of the claimant and the employer. By decision filed January 13, 2012 (011-40291), the Administrative Law Judge sustained 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 was employed by an airline for eleven years, for the last three years she had been an operational coordinator and ground security coordinator. The training for ground security coordinator takes three days and includes information on identification recognition and access to airplanes by unauthorized individuals. In June 2011, the claimant had been given a "Career Decision Day" for unsatisfactory performance. On September 27, 2011, the claimant was overseeing the departure of a flight leaving New York for Miami. The last passenger to board was another airline employee (G), who was traveling standby. G told the claimant that the passenger manifest for a flight which had left New York for Miami three hours earlier was listing him as a passenger on that flight. G was concerned about getting on the flight, but was also concerned that another person was using his identity. The claimant assumed that this was an error by the agents that had been responsible for the earlier flight; she told G he should contact corporate security or human resources. The claimant was most concerned with getting her flight off as scheduled; and did not contact anyone about the issue. At a meeting on October 17, 2011, attended by two

customer service managers and a peer witness for the claimant, she was asked about the incident. The claimant stated that she did not see it as a security issue but as a personal issue for G. The claimant was discharged on October 21, 2011, for her failure to act.

OPINION: The credible evidence establishes that the claimant was discharged because she failed to take any action after being notified of a circumstance which could have involved a breach of airline security. The claimant's contention that she assumed that the incident involved a clerical error only is not persuasive, as she had no way of knowing, at the time, whether the problem was clerical or security-related. Her contention that she was more concerned with ensuring the on-time departure of the flight is similarly unpersuasive, as no reason has been advanced why she could not take action after the departure of the flight. The claimant's reliance on the decision in Appeal Board No.316055 is misplaced: The holding in that case is not a rule which will be applied to all cases; and whether a single act constitutes misconduct will depend on the nature of the act and the known potential for harm. Moreover, the claimant in that case was a truck driver who was discharged after losing control of his truck, which resulted in damage to the truck and the cargo. Such loss of control is very different than the circumstances in this case, where the claimant made a conscious decision not to take any action on the information provided to her by another airline employee. It is also significant that the claimant had responsibility for security issues and had received training relating to unauthorized access to airplanes. Her behavior rises to the level of misconduct and, accordingly, we conclude that the claimant was separated from employment under disqualifying circumstances.

DECISION: The decision of the Administrative Law Judge is affirmed. The initial determination, disqualifying the claimant from receiving benefits effective September 30, 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 September 30, 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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1. In Appeal Board # 316,055 the Appeal Board ruled whether a single act constitutes misconduct will depend on the nature of the act and the known potential for harm. In this case the claimant's single act of failing to investigate a potential security breach jeopardized the safety of the airline's crew and passengers.
2. The principle of known potential for harm can be applied to other situations where a claimant's action, or non-action, could adversely affect the safety and/or security of individuals.
3. See Interpretation Index 1165.2 for a case in which the Appeal Board held that airport security may be held to a high degree of care due to the risks associated with their failure to provide such care.