

**STATE OF MICHIGAN  
Compensation Appellate Commission**

██████████ Medical Care Facility,

Employer-Appellant,

CASE NO. ██████████

---vs.---

Amy ██████████

Claimant-Appellee,

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J. Latif Baig (P36820)  
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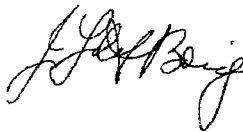
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**ARGUMENT**

Employer/Appellant ██████████ Medical Care Facility (██████████ Medical”), through its attorney, J. Latif Baig, moves for entry of an Order reversing the Order by the Administrative Law Judge granting Claimant/Appellee unemployment benefits; Appellant relies on the facts cited and arguments made in the attached Brief. Employer/Appellant waives Oral Argument.

Dated: September 1 ██████████

Respectfully submitted



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J. Latif Baig, Attorney for Employer/Appellant

**STATE OF MICHIGAN  
Compensation Appellate Commission**

██████████ Medical Care Facility,

Employer-Appellant,

CASE NO. B ██████████

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Amy ██████████,

Claimant-Appellee,

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J. Latif Baig (P36820)  
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**BRIEF IN SUPPORT OF APPEAL**

Employer/Appellant ██████████ Medical Care Facility (██████████ Medical”), through its attorney, J. Latif Baig, moves for entry of an Order reversing the Order by the Administrative Law Judge granting Claimant/Appellee unemployment benefits. The ALJ’s Order reversed an Agency adjudication dated April 29 ██████████ denying Claimant/Appellee unemployment benefits.

**STANDARD OF REVIEW**

The standard of review for ALJ or referee decisions by the Compensation Appellate Commission (“commission”) is well settled. The commission may review questions of law or fact or both on appeal from the ALJ. The commission can even take new evidence (board rule 305) and can consider that, along with the rest of the factual record, in rendering a decision.

## ARGUMENT

Neither party disputes that claimant was terminated from her employment for misconduct. MCL 421.29(1)(b) provides in part:

An individual shall be disqualified for benefits in the following cases in which the individual:

(b) Was suspended or discharged for misconduct connected with the individual's work ...

“Misconduct” is not defined in the statute but Courts have defined the term. In *Carter v Michigan Employment Security Commission*, 364 Mich 538 (1961), the Supreme Court adopted the definition of misconduct in *Boynton Cab Company v Neubeck*, 296 NW 636, 640 (Wis 1941) which, in part, states as follows:

The term ‘misconduct’ .., is limited to conduct evincing such willful or wanton disregard of an employer’s interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer’s interests or of the employee’s duties and obligations to his employer.

It is the employer's burden to demonstrate that misconduct was involved by a preponderance of evidence. *Fresta v Miller*, 7 Mich App 58, 63-64 (1967). In *Christophersen v City of Menominee*, 137 Mich App 776 (1984), the Court clarified the misconduct definition found in *Giddens v Employment Security Comm’n*, 4 Mich App 526, 534-35 (1966) and held that “misconduct” is established if the series of acts under scrutiny, considered together, evince a willful disregard of the employer’s interest. *Id.* at 781.

On December 17 [REDACTED] the claimant was discharged for violating the employer's drug administration standards. The employer had several policies that required that drugs to be administered and documented one patient at a time (see exhibits 7 and 17 in the record). She acknowledged these policies (see exhibit 48 in the record). The defendant used her own procedure, i.e., administer drugs to all the patients and then document the administration of the drugs, after the fact. As the employer witnesses testified, this posed significant risk to patients. In fact, the claimant's procedure violates the "five rights" (see Decision, p 2); the claimant acknowledged that she knew what the "five rights" were. The claimant was given a warning about her violation of policy (see exhibit 2 in the record).

The referee seemed to place much of the emphasis for his decision on the fact that the employer did not produce a first-hand witness that saw the claimant administer the drugs in violation of policy on December 7 [REDACTED] the incident that led to the warning prior to her termination. But what the referee seems to have missed is that the claimant admitted that Mr. [REDACTED] told her that her procedure was wrong (see D p 4), yet she continued to use the incorrect procedure; the written policies and procedures (which the claimant has acknowledged receiving) clearly states that employees must document drug administration immediately after the drug is administered, one patient at a time. Documentation is not to be done after all drugs have been administered, nor is it to be done after every six patients have been administered drugs (as the claimant claims she did after Mr. [REDACTED] told her she was violating policy - see D p 4).

The referee seems to believe that the claimant was "improving" by documenting after every six patients have been administered drugs. With respect to the final incident, the claimant again was

documenting after administrating meds to all patients (i.e., “charting at the end of the run” – see D p 5). This was against policy and even contrary to what the claimant even testified to what [REDACTED] warned her about.

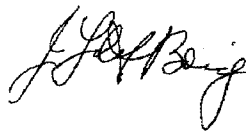
It is undisputed that the claimant was aware of the employer’s several policies, procedures, etc. that address drug administration, yet the claimant flagrantly disregarded these policies and procedures after being warned. This is statutory misconduct and the claimant should be denied her benefits.

### CONCLUSION

For the reasons cited above, the ALJ's decision should be reversed.

Dated: September 13 [REDACTED]

Respectfully submitted



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J. Latif Baig, Attorney for Employer/Appellant

## Table of Authorities

### Statutory and Administrative Authority:

MCL 421.29(1)(b)

MES Board Rule 305

### Case law:

Boynton Cab Company v Neubeck, 296 NW 636, 640 (Wis 1941)

Carter v Michigan Employment Security Commission, 364 Mich 538 (1961)

Christophersen v City of Menominee, 137 Mich App 776 (1984)

Fresta v Miller, 7 Mich App 58, 63-64 (1967)

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