

STATE OF MICHIGAN
 MICHIGAN COMPENSATION APPELLATE COMMISSION

(B)

In the Matter of the Claim of

AMY [REDACTED]

Appeal Docket No.: [REDACTED]

Claimant

Social Security No.: [REDACTED]

[REDACTED] MEDICAL CARE FACILITY,

Employer

DECISION OF MICHIGAN COMPENSATION APPELLATE COMMISSION

This case is before the Michigan Compensation Appellate Commission (Commission) as a result of the employer's August 9, [REDACTED] appeal from an August 5, [REDACTED] Administrative Law Judge (ALJ) decision. The decision reversed an April 29, [REDACTED] Unemployment Insurance Agency (Agency) redetermination and found the claimant was not disqualified for benefits under the misconduct provision of the Michigan Employment Security (MES) Act, Section 29(1)(b). After reviewing the record, we reverse.

The claimant, Amy [REDACTED], began working as a night shift nurse for the involved employer, [REDACTED] Medical Care Facility, in July of [REDACTED]. The claimant last performed services for the employer on or about December 17, [REDACTED] at which time she was discharged.

The prerogative to discharge an employee rests with the employer. However, the mere fact that an employer discharges an employee does not mean the employee is disqualified for benefits. See *Hagenbuch v Plainwell Paper Company, Inc.*, 153 Mich App 834 (1986). In order for a discharged employee to be disqualified, the employer must establish the reason for the discharge amounts to misconduct within the meaning of Section 29(1)(b) of the MES Act.

Section 29(1)(b) of the Michigan Employment Security Act provides:

- (1) An individual is disqualified from receiving benefits if he or she:
 - (b) Was suspended or discharged for misconduct connected with the individual's work or for intoxication while at work.

Ex B

The Michigan Supreme Court has defined misconduct as:

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.

Notably, the Michigan Supreme Court specifically excluded some conduct from its broad definition:

On the other hand, mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed 'misconduct' within the meaning of the statute.

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

When the issue is misconduct, the employer bears the burden of proof. See *Bell v Employment Security Commission*, 359 Mich 649 (1960). In order to meet that burden, the employer must introduce evidence which establishes by a preponderance that the claimant engaged in misconduct. See *Fresta v Miller*, 7 Mich App 58 (1967). Misconduct exists when the actions which resulted in the claimant's discharge fall within the definition set forth in *Carter, supra*.

The employer introduced competent and credible evidence which established that, despite repeated counseling, the claimant continued to exhibit an ongoing pattern of improperly documenting the drugs she administered to patients. The claimant collectively documented administering medications after finishing with all the patients rather than individually documenting the administration of drugs as they were given to each patient. Notably, the claimant did not deny failing to follow proper procedure but instead asserted her method had been condoned.

Even if for the sake of argument we accept the claimant's assertion that her method had previously been condoned, that was no longer the case as she had been repeatedly counseled that it was necessary to individually document the administration of medications which she failed to do. Her conduct deviated from that which the employer had a right to expect and evidences a willful disregard for the employer's interest. Therefore, the claimant is disqualified for benefits under the misconduct provision of the MES Act, Section 29(1)(b) and the ALJ's decision will be reversed accordingly.

For the reasons stated above, the ALJ's decision is reversed.

For the reasons stated above, the claimant is disqualified for benefits under the misconduct provision of the MES Act, Section 29(1)(b).

This matter is referred to the Agency for action consistent with this decision.

Patricia L. Halm
Patricia L. Halm, Commissioner

Danielle M. Brown
Danielle M. Brown, Commissioner

NEAL A. YOUNG, COMMISSIONER, DISSENTING:

I disagree with the Commission majority.

I have also reviewed the record in this matter. Having done so, I conclude that the ALJ's findings of fact accurately reflect the evidence introduced during the ALJ hearing and that the ALJ properly applied the law to those facts. Accordingly, I would affirm the ALJ's decision. As the Commission majority has chosen to do otherwise, I respectfully dissent.

Neal A. Young
Neal A. Young, Commissioner

MAILED AT LANSING, MICHIGAN

OCT 30

This decision shall be final unless EITHER (1) the Michigan Compensation Appellate Commission RECEIVES a written request for rehearing on or before the deadline, OR (2) the appropriate circuit court RECEIVES an appeal on or before the deadline. The deadline is:

DEC 02

TO PROTECT YOUR RIGHTS, YOU MUST BE ON TIME.

STATE OF MICHIGAN
MICHIGAN COMPENSATION APPELLATE COMMISSION

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In the Matter of the Claim of

AMY [REDACTED]
Claimant

Appeal Docket No.: [REDACTED]
Social Security No.: [REDACTED]

[REDACTED] MEDICAL CARE FACILITY,
Employer

ORDER DENYING APPLICATION FOR REHEARING

This case is before the Michigan Compensation Appellate Commission (Commission) upon application of the claimant for a rehearing by the Commission with respect to its decision dated October 30, [REDACTED]. The Commission, having read and considered said application, and having reviewed the record in this matter, is of the opinion that said application should be denied.

IT IS THEREFORE ORDERED that said application shall be and the same is hereby denied.

Patricia L. Halm
Patricia L. Halm, Commissioner

Danielle M. Brown
Danielle M. Brown, Commissioner

NEAL A. YOUNG, COMMISSIONER, DISSENTING:

I disagree with the Commission majority.

I believe the claimant's application for rehearing should be granted for the reasons expressed in the dissent from the October 30, [REDACTED] Commission decision. As the Commission majority has chosen to do otherwise, I must respectfully dissent.

Neal A. Young
Neal A. Young, Commissioner

MAILED AT LANSING, MICHIGAN FEB 21 [REDACTED]

This order will become final unless a written appeal therefrom is RECEIVED by the clerk of the appropriate circuit court on or before MAR 24 [REDACTED]

TO PROTECT YOUR RIGHTS, YOU MUST BE ON TIME.

EX 13