



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: APRIL 05, 2012

IN THE MATTER OF: Appeal Board No. 560349

PRESENT: GEORGE FRIEDMAN, MEMBER

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits effective February 15, 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 SUMMIT EDUCATIONAL prior to February 15, 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 July 21, 2011 (), 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 worked for the employer from November 29, 2010 through February 14, 2011 as a full time aid until March 7, 2011. The claimant requested a Leave of Absence (LOA) in order to be hospitalized in Michigan for experimental treatment for chronic, severe migraine headaches. On February 14, 2011, the claimant completed a leave of absence form requesting leave from February 15, 2011 to March 1, 2011. Beginning on February 15, 2011 the claimant's LOA began. On February 24, 2011, the employer granted her LOA initially through March 1, 2011. The letter also stated that the claimant must contact the employer about any changes or she could be fired. Upon receipt of documents from the claimant's physician, the claimant's LOA was extended and the claimant was expected to return to work on March 7, 2011. The physician's note dated February 24, 2011 stated that the claimant would remain in the

hospital until approximately March 7, 2011. The employer did not inform that claimant that her LOA was extended until March 7, 2011. On March 7, 2011, the claimant did not report to work or contact the employer. The employer contacted the claimant but was unable to reach her that day. As a result, on March 7, 2011, the claimant was fired. On March 9, 2011, the claimant was discharged from the hospital. During her stay in the hospital, the claimant was medicated. On March 10, 2011, when the claimant returned home from the hospital she received the letter approving her LOA and a termination letter.

OPINION: The credible evidence establishes that the claimant was fired for not returning to work on March 7, 2011 when her medical LOA ended. The claimant did not return to work on March 7, 2011 because she was still in the hospital and she did not receive notification from her employer that she was expected to return to work on March 7, 2011. It is undisputed that the claimant was medicated while in the hospital, and thus, was unable to contact the employer to extend her leave of absence. This constituted good cause for not contacting her employer and for not returning to work. Significantly, the claimant did not receive the employer's letter informing her that she could be fired for failing to update the employer if there were any changes. Although it would have been better for the claimant to have someone contact her employer, it was understandable that she did not make these arrangements since her stay in the hospital was extended and she was medicated. Accordingly, the claimant's employment ended under non-disqualifying circumstances and she is eligible for Unemployment Insurance Benefits.

DECISION: The decision of the Administrative Law Judge is reversed.

The initial determination, disqualifying the claimant from receiving benefits effective February 15, 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 February 15, 2011, cannot be used toward the establishment of a claim for benefits, is overruled.

The claimant is allowed benefits with respect to the issues decided herein.

GEORGE FRIEDMAN, MEMBER