SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5242-15T1

ROBIN CARBONE,

Appellant,

v.

BOARD OF REVIEW and MERIDIAN HOSPITALS CORPORATION,

Respondents.

Submitted June 6, 2017 – Decided June 23, 2017

Before Judges Fisher and Vernoia.

On appeal from the Board of Review, Department of Labor, Docket No. 077,640.

Bell, Shivas & Fasolo, P.C., attorneys for appellant (David T. Shivas and Michael K. Arroyo, on the briefs).

Christopher S. Porrino, Attorney General, attorney for respondent Board of Review (Melissa Dutton Schaffer, Assistant Attorney General, of counsel; Marolhin D. Mendez, Deputy Attorney General, on the brief).

Greenberg Traurig, LLP, attorneys for respondent Meridian Hospitals Corporation (Wendy Johnson Lario and Micala Campbell Robinson, on the brief).

PER CURIAM

In this appeal, we consider whether appellant Robin Carbone's actions in inaccurately reporting time she claimed to have worked, for which she was terminated from her employment with Meridian Hospitals Corporation, constituted — as the Board of Review found — "severe misconduct" that disqualified her from unemployment benefits, pursuant to N.J.S.A. 43:21-5(b), and liable for the repayment of $850 in benefits received, pursuant to N.J.S.A. 43:21-16(d). In adhering to our limited standard of review,[1] we affirm.

N.J.S.A. 43:21-5(b), as amended in 2010, enhanced the existing disqualification period for ordinary misconduct in cases where the claimant has engaged in "severe misconduct." That phrase was defined in the statute by way of a list of examples. That is, N.J.S.A. 43:21-5(b) declares that "severe misconduct" includes "repeated violations of an employer's rule or policy, repeated lateness or absences after a written warning by an employer, falsification of records, physical assault or threats that do not constitute gross misconduct . . ., misuse of benefits, misuse of sick time, abuse of leave, theft of company property," and other

[1] In Self v. Bd. of Review, 91 N.J. 453, 459 (1982), the Court held that when the Board's factual findings are supported "by sufficient credible evidence, courts are obliged to accept them." We are not to disturb agency actions unless they are "arbitrary, capricious, or unreasonable." Brady v. Bd. of Review, 152 N.J. 197, 210 (1997).

similar conduct. The Appeal Tribunal concluded that appellant's conduct was the product of a mistake, but the Board concluded she deliberately falsified company time records. The question for this court is whether the Board's conclusion, based as it was on substantial evidence, was either arbitrary, capricious or unreasonable.

The record reveals, as the Board found, that appellant did not accidently misstate on a single occasion that she was working when she was not. The Appeal Tribunal found — and the Board agreed — that this occurred on multiple occasions.

Appellant, as a patient care assistant, was obligated to swipe her badge on the employer's electronic timekeeping system to record when she was working; if that method failed or if appellant was working at other locations outside the facility, she was required to manually enter her time on a payroll "edit" sheet.

In October 2015, her supervisor determined that appellant had made what he viewed as unusual entries on the company's edit sheets.[2] He investigated further and found similar unusual entries on earlier occasions. Finding substantial evidence that appellant

[2] On one occasion, appellant texted her supervisor that she had switched her shift from October 12 to October 13 with another employee, yet she represented in the edit sheets that she worked both days.

had misrepresented her work hours on at least a handful of occasions,[3] appellant's supervisor and the senior manager of operations, questioned her. Appellant acknowledged her October 12 entry on the edit sheet was a mistake. When questioned about earlier dates on which her claim to have worked could not otherwise be corroborated, appellant asserted only: "if I marked that I was there, I was there."

Appellant was suspended pending further investigation. At an internal company hearing, appellant again asserted she made a mistake with the October 12 entry. She could not, however, offer any justifiable explanation for the other discrepancies in her time records. The employer concluded that appellant had falsified her hours and terminated her employment.

These circumstances are not in question. The only matter in controversy is whether appellant's conduct was the product of a mistake or mere negligence, or whether she deliberately provided false information to her employer. The Board concluded that appellant acted deliberately. After carefully examining the record

[3] This investigation also debunked any claim that the mis-recording of time was the result of a malfunctioning badge because appellant neither reported a problem with her badge and because, on those questionable days, there was no other evidence, such as recordings in patient records or appellant's image on surveillance tapes, that she was actually working.

in light of the issues posed, we conclude that the Board's determination was not arbitrary, capricious or unreasonable.

Affirmed.