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Although it is posted on the internet, this opinion is binding only on the  
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-5532-15T3

REEM SALEM,

Claimant-Appellant,

v.

BOARD OF REVIEW, DEPARTMENT  
OF LABOR and HACKENSACK  
UNIVERSITY MEDICAL CENTER,

Respondent-Respondent.

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Submitted December 20, 2017 — Decided January 31, 2018

Before Judges Currier and Geiger.

On appeal from the Board of Review, Department  
of Labor, Docket No. 087,405.

James Harrison Banks, attorney for appellant.

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

Respondent Hackensack University Medical  
Center has not filed a brief.

PER CURIAM

Claimant Reem Salem appeals from the July 12, 2016 decision of the Board of Review (Board) finding her ineligible for unemployment benefits pursuant to N.J.S.A. 43:21-5(b) as a result of severe misconduct connected to the work. After a review of the contentions in light of the record and applicable principles of law, we affirm.

Claimant was employed as a teacher in the childcare center of the Hackensack University Medical Center (HUMC). She was responsible for children aged eighteen months to three years. After her suspension and subsequent termination from HUMC, claimant submitted a claim for unemployment benefits. The Deputy Director of Unemployment Insurance determined that claimant had been discharged for severe misconduct connected to her work and, therefore, she was disqualified from benefits.

Following claimant's appeal of the determination, a telephonic hearing was conducted before the Appeal Tribunal. A representative of claimant's employer testified as to numerous incidents through the years in which claimant had violated workplace policies and procedures, placing the children at risk of harm. These incidents included using hot oil to cook food in the classroom, leaving bleach in an orange juice container within reach of the children, disregarding the proscribed procedures during fire drills, and distributing pennies to children, a

potential choking hazard. Verbal and written warnings were issued to claimant for these violations. Claimant had received similar warnings for poor work performance and had previously been suspended for several days for her poor performance just weeks before her discharge.

The employer described the incident that led to claimant's suspension as "the straw that broke the camel's back." She stated that claimant took a child who was potentially experiencing an anaphylactic allergic reaction onto an elevator alone, in violation of HUMC's strict policy of never being alone with any child or taking a child behind closed doors. This is for the safety and well-being of the child and "protects the professional liability issues."

Claimant's direct manager testified that policies and procedures are reviewed during monthly staff meetings. In addition, licensing regulations require all staff members to undergo ten hours of additional training yearly. The manager explained that claimant had been placed on a Performance Improvement Plan but she did not make any effort to improve in her job responsibilities. The manager stated:

The write-ups and the verbal . . . and the subsequent suspension were all about the same thing. It was that we were not only not seeing improvement in the classroom, there was blatant disregard for the process for the

guidance and coaching she was being given and [a disregard for] that coaching. She was exhibiting extremely poor judgment in the classroom that was adversely affecting the children in her care and so we continued down the progressive discipline policy until that final incident was just cause for termination in our eyes.

Claimant denied being instructed not to use an elevator alone with a child. She also stated that she was either not at fault for any of the policy and procedure violations or that she was unaware of the specific procedures. Claimant advised that she never intended any harm to the children in her care.

The Appeal Tribunal affirmed the Deputy's determination, finding that claimant was disqualified from benefits under N.J.S.A. 43:21-5(b) "as the discharge was for severe misconduct connected with the work." The Tribunal stated:

[A]t the hearing the claimant demonstrated a clear pattern of reacting poorly in key situations where the safety and wellbeing of the children in her care [were] put at significant risk. The claimant was working in a key position which required that she either mentally prepare for emergency situations, such as a fire drill or a child's allergic reaction, or know the exact policies involved or at least use common sense to react appropriately. The fact that the claimant displayed a lack of awareness that giving pennies to small children could represent a hazard indicates to the Tribunal such a pattern of disregard of common sense safety practices that it represents at least "simple misconduct" as provided by N.J.A.C. 12:17-10.7.

As this disregard of safety procedures, both specifically enumerated in policy and by common sense, could be substantially certain to cause injury, in the form of either an injured child or legal action against her employer, the claimant's actions are found to rise to the level of severe misconduct as defined by N.J.A.C. 12:17-10.1.

The Board affirmed the Tribunal's decision.

In this appeal, claimant argues that neither the Tribunal nor the Board found that she acted intentionally, deliberately, or with malice and, therefore, her alleged acts lack the intent required for a finding of severe misconduct.

We are mindful that our review of administrative agency decisions is limited. We will not disturb an agency's action unless it was clearly "arbitrary, capricious, or unreasonable." Brady v. Bd. of Review, 152 N.J. 197, 210 (1997).

N.J.S.A. 43:21-5(b) provides, in pertinent part, that an employee who has been suspended or discharged for severe misconduct connected with the work is disqualified for benefits. The statute provides examples of severe misconduct, including "repeated violations of an employer's rule or policy." Severe misconduct is defined in N.J.A.C. 12:17-2.1 as "an act which (1) constitutes 'simple misconduct,' as that term is defined in this section; (2) is both deliberate and malicious; and (3) is not 'gross misconduct.'" Malicious is defined as "when an act is done with

the intent to cause injury or harm to another or others or when an act is substantially certain to cause injury or harm to another or others." N.J.A.C. 12:17-2.1.

Under these definitions, we are satisfied there was ample support for the Board's determination that claimant's recurring actions constituted severe misconduct connected with the work. Claimant deliberately failed to follow her employer's policies and procedures on multiple occasions. Her actions, such as leaving chemical substances unlocked, giving small children pennies, and disregarding important safety procedures during a fire drill or medical emergency, were substantially certain to lead to harm to a child. Claimant had repeatedly failed to meet her employer's expectations, despite the issuance of numerous verbal and written warnings and even a period of suspension.

As we have previously stated, "[t]he repetitive violation of a rule, policy, or standard of conduct may justify a reasonable inference that the employee's disregard was deliberate and in that sense malicious." Silver v. Bd. of Review, 430 N.J. Super. 44, 57 (App. Div. 2013). The substantial credible evidence in the record supports the Board's determination that claimant was disqualified from benefits.

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.

  
CLERK OF THE APPELLATE DIVISION