

BR-1 # 10

**STATE OF CONNECTICUT**  
**Department of Labor**  
**Employment Security Appeals Division**  
**Board of Review**  
**38 Wolcott Hill Road**  
**Wethersfield, CT 06109**  
**Telephone: (860) 566-3045 Fax: (860) 263-6977**

**IMPORTANTE - TENGA ESTO TRADUCIDO**  
**INMEDIATAMENTE - TIEMPO LIMITADO PARA APELAR**

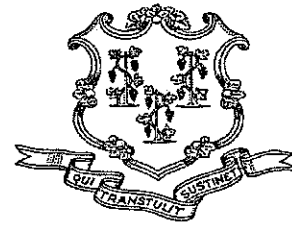
This is your case number from the Board of Review.

**Claimant's Name, Address & S.S. No.**

Employee Name  
and Address

**Board Case No.:** xxxx-BR- xx  
**Referee Case No.:** xxx-CC- xx

S.S. #: - -



**Employer's Name, Address & Reg. No.**

Employer Name  
and Address

**Date mailed to interested parties:** December 21, 2012

E.R. #:

**DECISION OF THE BOARD OF REVIEW**

**I. CASE HISTORY AND JURISDICTION**

By a decision issued on March 9, 2012, the administrator ruled the claimant ineligible for unemployment benefits effective January 15, 2012. On March 22, 2012, the claimant appealed the administrator's decision to the Hamden office of the appeals division. The appeals division scheduled a hearing of the appeal for April 13, 2012, which the claimant and employer attended. By a decision issued on May 14, 2012, Associate Appeals Referee Ronald T. Coleman reversed the administrator's ruling.

The employer filed a timely appeal to the board of review on May 25, 2012. Acting under authority contained in General Statutes § 31-249, we have reviewed the record in this appeal, including the recording of the referee's hearing.

**II. ISSUE**

The referee ruled that the claimant was discharged for reasons other than wilful misconduct in the course of the employment, and thus she was not disqualified from receiving unemployment compensation benefits. In support of this appeal from the referee's decision, the employer contends that the claimant did not take steps to treat her medical condition which would have prevented this incident; that the claimant never had insurance and still purchased her medicine; that the employer offered an inexpensive prescription plan to its employees; that the claimant always had the same hours so she had no excuse for not filling her prescription or treating her condition; and that the claimant deliberately tried to conceal her actions by using the call-blocking code on her telephone. The employer also contends that the claimant's medical documentation is insufficient. Finally, the employer seeks to supplement the record with a spreadsheet of the claimant's scheduled hours for the six months preceding her discharge.

The issue before the board is whether the claimant was discharged for wilful misconduct in the course of the employment.

**III. PROVISIONS OF LAW**

Section 31-236(a)(2)(B) of the General Statutes provides that an individual shall be ineligible for benefits if he or she was discharged or suspended for wilful misconduct in the course of employment. Section 31-236(a)(16) defines wilful misconduct, for purposes of the Unemployment Compensation Act, as:

deliberate misconduct in wilful disregard of the employer's interests, or a single, knowing violation of a reasonable and uniformly enforced rule or policy of the employer, when reasonably applied, provided such violation is not the result of the employee's incompetence and provided further, in the case of absence from work, 'wilful misconduct' means an employee must be absent without either good cause for the absence or notice to the employer which the employee could reasonably have provided under the circumstances.

**IV. FINDINGS OF FACT AND CONCLUSION OF LAW**

**Re-read this section at Step 3.**

Preliminarily, new evidence that will provide a basis for reopening the record must meet essentially the same test as the evidence required for granting a new trial. See *Grant v. Connecticut Unemployment Compensation Administrator, et al.*, Superior Court, judicial district of Hartford-New Britain at New Britain, Docket No. 410853 (February 22, 1984); see also General Statutes § 31-248(b). The evidence must be new, it must not have been discoverable through the exercise of due diligence, and it must be sufficiently material to provide some reasonable basis for producing a different outcome. *Grant, supra*. See also Regs., Conn. State Agencies § 31-237g-35.

The evidence that the employer seeks to submit is not newly discoverable and could have been presented at the referee's April 13, 2012 hearing. Moreover, while the employer attempts to show that the claimant's hours were not reduced, its statement to the administrator indicates that "over the past several months, all part time employees have had their hours reduced due to slow sales." Nonetheless, whether the claimant's hours were reduced or remained the same in the six months

back" and he "only heard about it today." Therefore, the claimant has supplied insufficient evidence to establish that she has a medical condition which excused her misconduct on January 15, 2012.<sup>1</sup>

→ In so ruling, we adopt the referee's findings of fact as our own, except that we add the following finding of fact: ←

This is why you have to go back and read the Appeals Referee Decision, too. The Board doesn't always write everything in their decision.

10. The claimant has suffered from obsessive compulsive disorder (OCD) and panic attacks since childhood. Her physician quotes a treatment note from 2000 which states that her OCD and panic attacks 'interfere with her keeping jobs.' The documentation indicates that, in a general sense, if an individual's anxiety is well controlled on medication and if that individual discontinues that medication then 'of course the anxiety would get out of control.' The documentation also states that her physician 'can't say anything particular about this incident since it occurred a long while back' and he 'only heard about it today.'

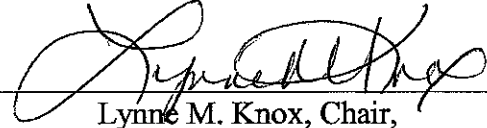
#### **V. DISPOSITION AND ORDER**

The referee's decision is **reversed** and the appeal is **sustained**. The claimant is disqualified from receiving unemployment compensation benefits effective January 15, 2012.

#### **VI. WAIVER OF OVERPAYMENT**

Pursuant to Regs., Conn. State Agencies § 31-273-4(b), we **waive** any overpayment resulting from our reversal of the referee's decision because the referee's critical findings of fact are not supported by the record.

#### BOARD OF REVIEW

  
Lynne M. Knox, Chair,  
ES Board of Review

In this decision, Board Member Elizabeth S. Wagner concurs.

LMK:VCF:lm

**IF YOU WISH TO APPEAL THIS DECISION, YOU MUST DO SO BY JANUARY 21, 2013. SEE LAST PAGE FOR IMPORTANT INFORMATION REGARDING YOUR APPEAL RIGHTS.**

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<sup>1</sup>The claimant is advised that she may file a timely motion to reopen if she can provide medical documentation that specifically establishes a nexus between her medical condition and conduct on January 15, 2012.

**COPIES OF THIS DECISION PROVIDED TO:**

### NOTICE OF APPEAL RIGHTS

This decision shall become final on the thirty-first (31st) calendar day after the date of mailing unless, before that date, a party appeals this decision to the Superior Court or moves the Board to reopen, vacate, set aside or modify the decision. The appeal or motion may be mailed or faxed to the office of the Employment Security Board of Review at the address or fax number listed in the heading of this decision. The appeal or motion may also be filed in person at any Connecticut Works office for forwarding to the Board, or by Internet at [www.ctboard.org](http://www.ctboard.org).

**PLEASE NOTE:** To be timely filed, the appeal or motion must be actually received at any such office no later than the thirtieth (30th) calendar day after the date of mailing of this decision or, if filed by mail, must bear a legible United States Postal Service postmark indicating that it was entrusted to the Postal Service within such thirty-day period. **The last day for filing an appeal or motion is listed at the end of the Board's decision.** Postmarks attributable to private postage meters are not acceptable. You may also use one of the private delivery services approved by the IRS: Airborne Express, DHL Worldwide Express, Federal Express, or United Parcel Service. If filed by fax or Internet, the appeal must be received by 11:59 p.m. on the thirtieth day. Neither the Superior Court nor the Board can entertain an untimely appeal or motion unless the appealing party can show good cause for failing to file the appeal or motion on time. Therefore, if your appeal or motion is late, you should indicate why.

Any appeal or motion should list the following identifying information contained on this decision: the case number; the claimant's name, address and social security number; and the employer's name, address and registration number.

A motion to reopen this decision should be specifically titled as such. The original copy of the motion should be filed with the Board. A copy of each motion should also be delivered or mailed to each other party, including the Administrator, and the attorney or authorized agent of record of such party, no later than the date that the motion is filed with the Board. The Administrator's copy of the motion should be sent to: Administrator's Appeals Representative, Office of Program Policy, Connecticut Labor Department, 200 Folly Brook Boulevard, Wethersfield, CT 06109.

An appeal to Superior Court should be titled "Appeal to Superior Court" and should state the grounds on which Superior Court review is sought. Appeals to Superior Court must be filed with the Board so the Board can certify the record to the Court. **Appeals must NOT be sent directly to any Superior Court.** See General Statutes § 31-249b for information concerning appeals to the Superior Court.

If a party who files an appeal to the Superior Court wishes to dispute the Board's findings of fact, it has to file a Motion to Correct Findings. Procedures for filing such a motion are set forth in Chapter 22 of the Connecticut Practice Book.

### NOTIFICACION DE DERECHOS DE APELACION

Esta decisión se considerará final a los treinta y ún días (31) después de la fecha de envío a menos que antes de esa fecha, alguna de las partes apele esta decisión a la Corte Superior, Distrito Judicial de Hartford, o al Distrito Judicial en el que reside la parte apelante; o conduzca a la Junta de Revisión a reabrir, anular, ignorar o modificar la decisión. La apelación o moción puede enviarse por correo o por medio del fax a la oficina del Employment Security Board of Review a la dirección y número de fax arriba indicados. También puede ser presentada en persona en cualquiera de las oficinas de Connecticut Works/Job Center para ser enviada a la Junta; o por el Internet a: [www.ctboard.org](http://www.ctboard.org).

**POR FAVOR NOTE:** Para que su apelación sea considerada, esta deberá ser recibida en cualquiera de las oficinas no más tarde del trigésimo día (30) calendario después de la fecha de envío de la decisión, o si es enviada por correo deberá tener un matasello legible del Servicio Postal de los Estados Unidos indicando que fue colocado en el correo dentro de este periodo. No serán aceptados matasellos o marcas de correo privado, pero usted puede utilizar los servicios de correo privado aprobados por el IRS: Airborne Express, DHL Worldwide Express, Federal Express o United Parcel Service. En caso de ser enviado por fax o Internet, la apelación debe ser recibida por el Departamento antes de las 11:59 p.m. del trigésimo (30) día. Ni la Corte Superior ni la Junta de Revisión pueden considerar una apelación tardía a menos que el apelante demuestre justa causa por su demora. Por lo tanto, si su apelación o moción es tardía, usted deberá explicar las razones por la misma. El último día para apelar se indica al final de la decisión de la Junta de Revisión.

Toda apelación o moción deberá incluir la siguiente información: número del caso; nombre del reclamante, dirección y número de seguro social; y el nombre del patrono, dirección y número de registro.

Toda apelación a la Corte Superior llevará el título "Apelación a la Corte Superior" y deberá indicar la razón por la cual se le pide a la Corte una revisión. Las apelaciones a la Corte Superior se deben presentar primero en la Junta de Revisión para que el expediente pueda ser certificado y presentarlo a la Corte Superior. Las apelaciones **NO DEBEN** enviarse directamente a ninguna Corte Superior.

Una moción a la Junta de Revisión para reabrir esta decisión debe llevar ese título en específico. La moción original debe registrarse en la Junta de Revisión. Debe enviar copia de la moción a todas las partes incluyendo al Administrador, abogado o agente autorizado de cada una de las partes no más tardar a la fecha que la moción se registró ante la Junta. La última página de cada moción deberá incluir una declaración describiendo cómo y cuándo se le proveyeron copias a las demás partes. La copia de la moción para el Administrador deberá ser enviada a la siguiente dirección: Administrator's Appeals Representative, Office of Program Policy, Connecticut Labor Department, Employment Security Division, 200 Folly Brook Boulevard, Wethersfield, CT 06109. Cada moción debe describir las razones para la misma y, si se alega nueva evidencia como el motivo para la moción, deberá especificar lo siguiente: la identidad e importancia de la nueva evidencia y la razón por la cual esa evidencia no fue presentada en la audiencia anterior.