

STATE OF CONNECTICUT
EMPLOYMENT SECURITY APPEALS DIVISION
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IMPORTANTE - TENGA ESTO TRADUCIDO
INMEDIATAMENTE - TIEMPO LIMITADO PARA APELAR

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

Case No.: 0743-CC-20

JASON W BARTLETT
22 HOWARD AVE A-R2
NEW HAVEN, CT 06519

S. S. #: 040-70-9628



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

CITY OF NEW HAVEN
C/O UTMC
P.O. BOX 346
WAKEFIELD, MA 01880

E. R. No.: 00-000-93

Mailing Date: May 22, 2020

DECISION OF APPEALS REFEREE

CASE HISTORY

On March 24, 2020, the Administrator ruled the claimant, Jason W. Bartlett, ineligible for benefits effective February 16, 2020. The Administrator found the employer discharged the claimant for reasons which constituted wilful misconduct in the course of his employment.

The claimant filed a timely appeal from the Administrator's determination on April 8, 2020. The Referee heard the claimant's appeal on May 18, 2020.

APPEARANCES

The claimant appeared with Attorney Tricia Jessica Johnson telephonically. Attorney Cynthia Jennings observed the proceedings telephonically.

The employer did not appear.

The Administrator did not appear.

FINDINGS OF FACT

1. The claimant, Jason W. Bartlett, worked for City of New Haven from January 2014 to February 22, 2020. At the time of his discharge, the claimant worked as the Director of Youth Services earnings \$110,250.00 per year.
2. At 9:25AM on December 23, 2015, the employer's Engineering department issued an email to the claimant and three other individuals notifying them that a Request For Proposal (RFP) for its Teen Center Design project had been uploaded to the docushare website for bidding. The employer assigned the numeric identifier 15-198-15 to the RFP. (See Claimant's Exhibit #3)
3. At 9:29AM that same morning, the claimant sent an email message to an associate, Maverick Jacobs, who is the sole proprietor of New Birth Construction. The claimant has known Jacobs for over twenty (20) years. Included as an attachment to this email were the RFP/RFO Solicitation Specification – Required Information and Project Overview. (See Claimant's Exhibit #3)
4. The claimant used his personal cellular phone to issue the email message to Jacobs. The employer did not pay for or provide a stipend for the claimant's cellular phone.
5. On April 6, 2018, the employer entered into an agreement effective January 6, 2016, with Triad Construction Services LLC for professional services for Teen Center "Escape". (See Claimant's Exhibit #6, 18 pages)
6. On June 27, 2019, the claimant last worked.
7. On this day, Tomas Reyes, the then Chief of Staff for the then Mayor Toni Harp, placed the claimant on paid administrative leave as the employer commenced an investigation as a result of subpoena issued by the Federal Bureau Investigation (FBI).
8. On October 25, 2019, the employer completed its investigation and recommended the claimant be terminated. This report was sent to then Mayor Harp who did not agree with the termination recommendation.
9. On November 7, 2019, then Mayor Harp ordered the claimant returned to work on November 12, 2019.
10. On November 10, 2019, the then Corporation Counsel, John Rose went to the claimant's residence and advised him he would not be returning as ordered by Mayor Harp on November 7, 2019.
11. Following this event, the claimant spoke then Deputy Chief of Staff, Andrea Scott, for an explanation of why Rose would not allow him to return to work as ordered by the Mayor Harp.
12. At unspecified point following the conclusion its investigation, the employer reopened the investigation based on the discovery of evidence. (See Claimant's Exhibit # 2, page 1 of 2)
13. On or about November 18, 2019, the claimant filed a retaliation complaint against the employer based on his race and sexual orientation. The claimant filed this complaint after learning other employees who were part of the employer's investigation were not treated similarly.

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14. On December 4, 2019, the employer completed the second investigation and again recommended the claimant be terminated. This report was sent to then Mayor Harp who did not agree with the termination recommendation.
15. On December 31, 2019, Mayor Harp last served as Mayor for the employer.
16. On January 1, 2020, Justin Elicker was sworn in as Mayor for the employer.
17. On January 27, 2020, the claimant and Attorney Jennings attended a meeting with Mayor Elicker, Attorney Patricia King and Corporation Counsel Sean Matteson. The claimant presented evidence to refute the allegations in its December 4th investigation report summary.
18. During this meeting, the claimant requested an opportunity to provide additional documentation to support his case. The employer agreed and gave the claimant three (3) weeks to provide this documentation.
19. Three (3) weeks from January 27, 2020 was February 17, 2020.
20. On February 18, 2020, the claimant with assistance from Attorney Jennings requested an extension for him to provide his additional documentation. The employer denied this request.
21. On February 20, 2020, the employer discharged the claimant via a hand delivered letter. . (See Claimant's Exhibit #1)
22. In the hand delivered letter, the employer advised in relevant part “. . . You are being terminated for ‘cause’ as a result of the findings outline in the two (2) investigative reports” (See Claimant's Exhibit #1)
23. On February 26, 2020, the claimant initiated a new claim for unemployment compensation benefits effective Sunday, February 23, 2020.
24. In its written statement to the Administrator's predetermination hearing request (for IS790E), the employer advised in relevant part “. . . After the Escape Teen Center RFP went out to bid, Mr. Bartlett selected Mr. Jacobs his company New Birth Constructions as the contractor for the Teen Center.” (See Administrator's Exhibit#5, page 5 of 6)
25. Additionally, the employer advised the claimant's action were a violation of its Standards of Conduct for appointed public officials or municipal employees. Specifically, the employer advised in further relevant part “. . . A public official or municipal employee who has a conflict of interest in a matter affecting the city shall refrain from taking any action on in the matter.” and “. . . “Public officials and municipal shall not give no special treatment or consideration to any person or group beyond that which is available to any other person or group.” (See Administrator's Exhibit#5, page 5 of 6)

ISSUE

The issue raised by this appeal is whether the Employer City of New Haven, discharged the claimant, Jason W. Bartlett, for a knowing violation of a reasonable and uniformly enforced workplace rule in the course of his employment.

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PROVISIONS OF LAW

Section 31-236(a)(2)(B) of the General Statutes provides that an individual is ineligible for benefits if he was discharged or suspended for wilful misconduct in the course of his employment. The individual will remain ineligible until he has earned at least ten times his benefit rate. Section 31-236(a)(16) of the General Statutes further provides that, except in the case of a discharge resulting from an absence from work, "wilful misconduct" means: 1) deliberate misconduct in wilful disregard of the employer's interest, or 2) a single knowing violation of an employer's reasonable and uniformly enforced rule or policy, when reasonably applied, unless the violation is due to an employee's incompetence.

ANALYSIS AND CONCLUSION OF LAW

In the case before the Referee, the employer discharged the claimant. Specially, the employer advised the Administrator the claimant purportedly violated its Standards of Conduct for appointed public officials or municipal employees. To establish that an individual was discharged or suspended for a knowing violation of a reasonable and uniformly enforced rule or policy of the employer, when reasonably applied, all of the following must be found: 1) the individual knew or should have known of the rule or policy because it was effectively communicated to the individual; 2) the individual's conduct violated the rule; 3) the individual was aware he was engaged in such conduct; 4) the rule is reasonable in light of the employer's lawful business interest and there is a clear relationship between the rule, the conduct regulated, and the employer's lawful business interest; 5) the employer uniformly enforced the rule in that similarly situated employees subject to the workplace rule are treated in a similar manner when they violate a rule or policy; 6) the rule is reasonably applied in that the action taken by the employer is appropriate in light of the violation of the rule and the employer's lawful business interest, and there were no compelling circumstances which would have prevented the individual from adhering to the rule; and 7) the violation of the rule was not the result of the individual's incompetence. See Regs., Conn. State Agencies § 31-236-26b. The employer has the burden of proving that all of the elements of the regulation pertaining to rule violations have been satisfied. were a violation of its Standards of Conduct for appointed public officials or municipal employees, Board Case No. 1188-BR-96 (9/27/96).

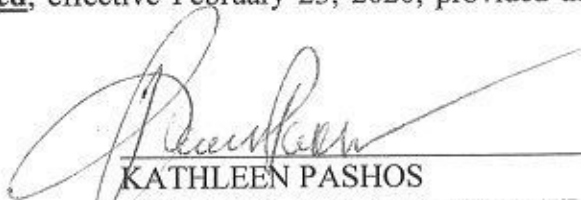
In this matter, the employer failed to appear to provide vital testimony on the circumstances leading to the termination. When an individual has been discharged from a job, he will not be disqualified from receiving unemployment benefits unless it is established that the discharge was for wilful misconduct in the course of the employment. The employer has the burden of proving that the act or acts which caused the discharge or suspension were of such nature as to constitute wilful misconduct within the meaning of the Unemployment Compensation Act. The standard of proof in administrative proceedings is proof by a preponderance of the evidence. *White v. Aero-Space Techniques, Inc.*, Board Case No. 197-74-BR (2/21/75).

The common law and statutory rules of evidence are not strictly applied in administrative proceedings, and referees are not bound by those rules in unemployment compensation eligibility hearings. General Statutes § 31-244a. Therefore, hearsay evidence may be admissible for purposes of satisfying the employer's burden of proof and may be considered by the referee, but the reliability and the ultimate probative value of such evidence must be assessed in determining the weight it is to be given. Unreliable hearsay evidence may not be used to support a finding of fact. The first-hand testimony of the claimant, if credible, generally has greater evidential value than hearsay evidence offered by the employer. A failure to present all available testimony from persons with direct personal knowledge of the facts in question will make it difficult for the employer to satisfy its burden of proving wilful misconduct. *Jarvis v. Bodine Corp.*, Board Case No. 290-87-BR (5/8/87).

Although the claimant presented substantial evidence, the employer again failed to appear. A review of the claimant's evidence revealed inconsistencies in the information provided to him by the employer regarding its investigations into workplace actions. The employer failed to provide specific detailed information on what special treatment or consideration was provided by the claimant to any person or group beyond that which is available to any other person or group. Absent vital pertinent testimony from the employer, this Referee must conclude the employer has failed to sustain its burden of proof that the claimant knowingly violated a reasonable and uniformly enforced workplace rule. As a result, the claimant is not disqualified from receiving unemployment compensation benefits pursuant to General Statutes § 31-236(a)(2)(B).

DISPOSITION AND ORDER

The Administrator's determination is reversed with a modification to the effective date, and the claimant's appeal is sustained. Benefits are awarded, effective February 23, 2020, provided the claimant is otherwise eligible.


KATHLEEN PASHOS
PRINCIPAL APPEALS REFEREE

KPT:tw

IF YOU WISH TO APPEAL THIS DECISION, YOU MUST DO SO BY JUNE 12, 2020.
SEE LAST PAGE FOR IMPORTANT INFORMATION REGARDING YOUR APPEAL RIGHTS.

COPIES OF THIS DECISION PROVIDED TO:

Jason W. Bartlett
22 Howard Avenue, R-2
New Haven, CT 06519

Attorney Tricia Jessica Johnson
340 Broad Street, Suite 200
Windsor CT 06095

NOTICE OF APPEAL RIGHTS

This decision shall become final on the twenty-second (22nd) calendar day after the date of mailing unless, before that date, a party either appeals this decision to the Board of Review or moves the Referee to reopen, vacate, set aside or modify the decision. The appeal or motion may be mailed or faxed to the Appeals Division 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 American Job Center, or by the Internet at 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 twenty-first (21st) calendar day after the date of mailing of this decision or, if filed by mail, must bear a legible United States Postal Service postmark showing that it was placed in the possession of the Postal Service for delivery within such twenty-one day period. Postmarks attributable to private postage meters are not acceptable, but you may 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 the Connecticut Appeals Division or the Department of Labor by 11:59 p.m. on the twenty-first day. The last day for filing an appeal or motion is listed at the end of the Referee's decision.

If the appeal or motion is late: Neither the Board of Review nor the Referee 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 explain why.

FORMS AND ASSISTANCE ARE AVAILABLE AT EACH AMERICAN JOB CENTER OFFICE FOR USE IN PREPARATION OF AN APPEAL. Each appeal may be filed by means of the prescribed form or a typed or legibly written statement which describes and explains all reasons for the appeal. The Board issues a written decision addressing the legal and factual claims stated in every timely-filed appeal. Generally, appeals are decided by two of the three members of the Board on the basis of the existing record, and the Board does not hold a further hearing. An appeal may include, under separate headings, a request for a decision by the full three-member Board, a request for a further evidentiary hearing indicating the reasons for such request, or written argument in support of the appeal. **NOTICE TO THE CLAIMANT:** (1) If you appeal this decision, you should continue to file benefit claims, as directed, while unemployed to protect your benefit rights. (2) If you have already been paid unemployment compensation benefits and the decision of the Referee is against you, an overpayment will be established in your account which you may have to repay. Once this decision becomes final, you will not have another opportunity to contest the decision of ineligibility which created the overpayment.

NOTIFICACION DE DERECHOS DE APELACION

Esta decisión se considerará final a los veintidós (22) días calendario después de la fecha de envío, a menos que, antes de esa fecha, cualquiera de las partes apele esta decisión a la Junta de Revisión (Board of Review). La parte afectada apela ante la Junta de Revisión o conduce al árbitro a reabrir, anular, ignorar o modificar la decisión. La apelación o moción puede ser enviada por correo o por medio del fax a la División de Apelaciones a la dirección postal o número de fax arriba mencionado. La apelación o moción también puede ser registrada en persona en cualquier oficina de American Job Center, o por Internet a www.ctboard.org. **POR FAVOR NOTE:** Para que su apelación tenga validez debe ser enviada a una de estas oficinas dentro de los próximos 21 días calendario a la fecha de envío de esta decisión o si la envía por correo, debe tener una marca de matasello legible del Servicio de Correo de los Estados Unidos de América, indicando que fue colocado en el correo dentro de este período. 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 del Trabajo o la División de Apelaciones antes de las 11:59 p.m. del vigésimo primer día (21). El último día para presentar una apelación o moción se encuentra al final de la decisión tomada por el Arbitro.

Si la apelación o moción es tardía: Ni la Junta de Revisión (Board of Review) ni el Arbitro (Referee) pueden considerar una apelación que haya sido enviada después de la fecha límite, a menos que la parte afectada pueda demostrar con causas justas el motivo de la demora.

TENEMOS FORMULARIOS Y AYUDA DISPONIBLE EN CADA OFICINA DE AMERICAN JOB CENTER PARA UTILIZAR EN LA PREPARACION DE UNA APELACION. Cada apelación puede registrarse por medio de formularios establecidos o una declaración escrita legible explicando todas las razones para la apelación. La Junta promulga una decisión escrita señalando los aspectos legales y los objetivos establecidos en cada apelación que se haya presentado a tiempo. Generalmente, las decisiones de estas apelaciones están tomadas por dos de los tres miembros de la Junta, basada en el documento actual, y la Junta no tiene otra audiencia de evidencia. Una apelación puede incluir bajo títulos diversos, una petición para que la decisión sea tomada por los tres (3) miembros de la Junta; o una petición solicitando otra audiencia de evidencia indicando las razones de tal petición, o un argumento escrito que respalde su apelación. **AVISO AL RECLAMANTE:** (1) Si usted apela esta decisión, debe continuar sometiendo su reclamación de beneficios todas las semanas, como se indica, mientras está desempleado para proteger sus derechos de beneficios. (2) Si usted ya recibió beneficios de compensación por desempleo y la decisión del árbitro no está a su favor, se establecerá un sobrepago en su cuenta el cual usted tendría que repagar. Cuando esta decisión llegue a ser final, no tendrá otra oportunidad para disputar la decisión de ineligibilidad que creó el sobrepago.