

*Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2002-521

APRIL TERM, 2003

	}	APPEALED FROM:
	}	
Lorinda A. Dudley	}	Employment Security Board
	}	
v.	}	
	}	DOCKET NO. 08-0-1-34-12
Department of Employment &	}	
Training	}	
	}	
	}	

In the above-entitled cause, the Clerk will enter:

Claimant Lorinda A. Dudley appeals pro se the Employment Security Board's decision finding her ineligible for unemployment benefits because she was discharged for work-related misconduct. She argues that the Board's findings are not supported by the evidence. We affirm.

The following evidence was presented at the hearing in this matter. Claimant was employed by Stoney Acres Child Care, Inc. as a childcare provider for approximately eight months. Although initially pleased with claimant's performance, her employer became increasingly dissatisfied and placed claimant on probation in March 2002. The employer identified numerous areas where claimant needed improvement, including her interaction with the children, her use of inappropriate language, and her supervision of the children's mealtimes. Despite the employer's warnings, problems with claimant's work performance continued. Additionally, on several occasions, claimant failed to properly administer and record medication she had given to the children. At the end of May 2002, claimant was fired. On the day of her discharge, claimant had again failed to record the medication she had provided to a child.

Claimant applied for unemployment compensation benefits but was found statutorily disqualified after the Board concluded that she had been discharged for work-related misconduct. See 21 V.S.A. §1344(a)(1)(A). The Board explained that claimant had shown some improvement but "other problems about which she had been warned persisted." The Board found it particularly important that claimant had repeatedly failed to record medication given the mandatory nature of this requirement. Consequently, the Board found claimant disqualified from receiving benefits. This appeal followed.

An employee is disqualified from receiving unemployment benefits if she "has been discharged by . . . her last employing unit for misconduct connected with . . . her work." 21 V.S.A. §1344(a)(1)(A). An employee's misconduct "must be in substantial disregard of the employer's interest, his disregard being either willful or culpably negligent." Favreau v. Dep't of Employment & Training, 151 Vt. 170, 172 (1989). The employer bears the burden of proving misconduct by a preponderance of the evidence. Romeo v. Dep't of Employment & Training, 150 Vt. 591, 592 (1988). We will not disturb the Board's factual findings and conclusions on appeal if they are supported by credible evidence. Allen v. Dep't of Employment & Training, 159 Vt. 286, 289 (1992).

Although claimant states that the Board's decision lacks evidentiary support, the thrust of her argument is that she should not have been discharged in the first place. After reviewing the record, we find the Board's determination supported by credible evidence. At the hearing on this matter, the owner and director of the day care center, Linda Lamothe, testified that claimant's work performance was unsatisfactory. Ms. Lamothe identified specific areas in which claimant's performance was inadequate. Claimant's performance did not improve and she was fired. According to the

employer, claimant' s most significant shortcomings " were the food, the children not being fed properly and the medication." Three of claimant's co-workers testified to experiencing the same problems with claimant that Ms. Lamothe had identified. Claimant conceded at the hearing that she had failed to properly record medication. In light of this, we find the Board' s determination supported by credible evidence.

To the extent claimant raises other arguments on appeal, the briefing is so inadequate that we cannot discern them and therefore do not address them. See Johnson v. Johnson, 158 Vt. 160, 164 n.\* (1992).

Affirmed.

BY THE COURT:

---

John A. Dooley, Associate Justice

---

Denise R. Johnson, Associate Justice

---

Ernest W. Gibson III, Associate Justice (Ret.)

Specially Assigned