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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2002-489

APRIL TERM, 2003

Deborah J. Mayo v. Department of Employment & Training	}	APPEALED FROM: Employment Security Board DOCKET NO. 06-02-065-11

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

Claimant Deborah J. Mayo appeals from a decision of the Employment Security Board denying her unemployment benefits on the basis of misconduct associated with her work. Claimant contends the evidence: (1) does not demonstrate a course of insubordinate conduct in disregard of her employer' s interests disqualifying her from benefits; and (2) demonstrates that claimant was actually discharged for one incident that does not justify a denial of benefits. We affirm.

Claimant was employed as a drug and alcohol counselor by Recovery House, Inc., a home that provides substance abuse services to both temporary residents and outpatients and their families. Clinical staff of Recovery House prepare and implement treatment plans while individuals are in residence. The Board found that for individuals to benefit from their temporary residence such plans " must be drawn up and implemented promptly." Recovery House also provides " family group" sessions for substance abusers and their families. The Board found that the family group program is required for the continued accreditation and funding of Recovery House.

The executive director of Recovery House testified, and the Board found, that claimant had failed on a number of occasions to develop treatment plans for residents in a timely fashion and was meeting irregularly with the family groups scheduled on Sundays. The director and the clinical supervisor instructed claimant on several occasions to make individual treatment plans a priority of her work and to attend more diligently to the family sessions. Claimant' s response to the instructions was generally to become argumentative, assert that she was overworked, and state her belief that the clients' needs came before " having the paperwork done to look good for accreditation." Claimant also expressed concerns about having meetings on Sundays, but declined effort by her supervisors to arrange the meetings for weekday evenings.

Complaints about claimant' s performance resulted in a decision by the Board of Directors to place her on probation. When the president of the Board informed claimant of the Board' s decision and asked her to sign a document acknowledging receipt of the probationary warning, claimant became upset and argumentative and began writing a statement on the document. The president then retrieved the document, informed claimant that she was suspended and subject to dismissal, consulted with the Board, and sent claimant notice of her discharge. Her last day of work was April 4, 2002.

Several days later, claimant filed a claim for unemployment benefits. The claims adjuster found that claimant had been discharged for misconduct associated with her work, and denied benefits for the period between April 13 and May 18, 2002, under the provisions of 21 V.S.A. §1344(a)(1)(A) (individual shall be disqualified for benefits for period of not

more than 12 nor less than 6 weeks if commissioner finds that individual was discharged for " misconduct connected with his or her work"). Claimant appealed the decision. Following an evidentiary hearing, the appeals referee sustained the claims adjuster' s decision. Claimant then appealed to the Board which, following a hearing, issued a written decision sustaining the decision of the appeals referee. This appeal followed.

We will uphold the Board' s factual findings unless clearly erroneous, and its conclusions of law if fairly and reasonably supported by the findings. Bouchard v. Dep' t of Employment & Training, 816 A.2d 508, 510 (2002). To be disqualified from unemployment benefits for misconduct, 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). Misconduct may take the form of repeated insubordination after receiving warnings from the employer. Id. at 174.

Claimant here contends that her conduct was not in substantial disregard of her employer' s interest and therefore was not, as a matter of law, misconduct. Her claim is premised upon the assertion that the source of conflict at work involved merely " professional disagreements" about how she could best " serve the clients and satisfy administrative demands." The Board correctly rejected this assertion, however, explaining that claimant' s supervisors had plainly made their " own considered decision about what was best for patient care and the continuing operation of the residence," and that it was " the employer' s prerogative, not the claimant' s, to assign directives and priorities as it sees fit." The employer' s decision to make treatment plans and group sessions a priority was a reasonable one in light of the evidence. There is no basis, legal or factual, for claimant' s assertion that she was entitled, consistent with the employer' s interests, to reject those priorities. Although she asserts that the situation is analogous to Johnson v. Dep' t of Employment Security, 138 Vt. 554, 555 (1980), that case turned on a finding that the claimant' s alleged misconduct resulted from a " misunderstanding of the job requirements." The evidence here was plain that claimant understood her employer' s requirements, but chose to subordinate them to her own priorities.

Claimant also asserts that her conduct did not rise to the level of insubordination because it did not involve " repeated instances of egregious behavior." She compares the instant case to Favreau, 151 Vt. at 171, which affirmed a denial of benefits where the employee was discharged for disruptive behavior following an earlier warning for engaging in a " tantrum," and Cross v. Dep' t of Employment & Training, 147 Vt. 634, 636 (1987), which held that benefits were properly denied a claimant who was discharged for repeated use of profanity. These cases do not, however, establish that a baseline for insubordination is offensive behavior. The evidence here that claimant was argumentative, uncooperative, and resistant in the face of repeated requests to prioritize patient treatment plans and group sessions was sufficient to establish insubordination. Claimant also asserts that the evidence failed to support the Board' s finding that claimant " refused" to carry out her responsibilities according to the employer' s priorities. Both the executive director and the clinical supervisor clearly testified, however, that claimant rejected or ignored requests to complete patient plans more expeditiously and make the group sessions a top priority.

Finally, claimant asserts that she was improperly discharged for the one incident in which she refused to sign the probationary warning. She relies on Mazut v. Dep' t of Employment & Training, 151 Vt. 539, 542 (1989), which upheld the Board' s determination that a single instance of disruptive conduct did not amount to a substantial disregard of the employer' s interests warranting the denial of benefits. The record supports the Board' s findings, however, that claimant was placed on probation, and ultimately discharged, for a course of insubordinate conduct that culminated with her refusal to accept the probationary warning. Accordingly, we discern no basis to disturb the Board' s decision.

Affirmed.

BY THE COURT:

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John A. Dooley, Associate Justice

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Denise R. Johnson, Associate Justice

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

Specially Assigned