

Using Your Cell Phone at Work Can Cost You Your Job and Unemployment Compensation

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A Pennsylvania nurse who worked as an R.N. in a nursing center decided to use her private cell phone to post on Facebook that a co-worker had soiled her pants while at work.¹ What made matters worse was that she did the posting on Facebook while she was administering medications to patients in the facility.

The nursing center had an established policy that prohibited the use of cell phones while at work. The center also had an established progressive disciplinary policy but it allowed the employer to terminate an employee if an employee engaged in any conduct that could cause a life-threatening situation to a patient or patients.²

When the employer reviewed the nurse's Facebook page and found the posting, she was terminated from her position. The nurse filed for unemployment compensation and the initial decision of an Unemployment Compensation Center was that the use of her cell phone was "willful misconduct" and unemployment compensation benefits were denied.

The nurse then appealed that decision to a Referee, who held that the nurse had not been terminated for conduct that was "willful conduct" under the state statute and granted unemployment compensation.³ The nursing center appealed that decision to the Unemployment Compensation Board of Review.

The Board upheld the denial of benefits.

The nurse filed an appeal with the Commonwealth of Pennsylvania Court which affirmed the Board's decision that the nurse was terminated for "willful misconduct", thus prohibiting any unemployment benefits. The court carefully analyzed both the Referee's findings and the Board's review of the situation.

It noted that the nurse was aware of the employer's policy and, in fact, had been previously warned for violating it prior to the current case;⁴ that the policy was a reasonable one; that using the cell phone while administering medications could easily place a patient at a serious risk; and that a violation of an employer work rules and/or policies could constitute "willful misconduct", despite the term not being defined in the applicable statute but by prior case law.⁵

In the appeal before the court, the nurse raised for the first time that the employer violated her federal constitutional rights (e.g., privacy and free speech) by searching her Facebook page. Because this issue was not raised in the prior determinations in the case, as is required in

applicable Pennsylvania statutes and case law, the appellate court did not rule on the issue.

The court also addressed the progressive disciplinary policy of the nursing center. An employer, including this employer, has the right to bypass the progressive steps of such a policy and immediately terminate an employee when a patient is exposed to a possible life-threatening event due to the employee's conduct.⁶

This nurse exercised extremely poor judgment in using her cell phone to post an embarrassing and upsetting event of one of her co-workers. However, the blunder takes on a whole different character while doing so while at work and while administering medications to patients. Her conduct was ill-conceived.

One principle this case illustrates is think rationally and reasonably before you act. The denial of unemployment benefits is one legal ramification. The other, and one much more important, is the risk to patients under your care if you act upon a serious lapse of judgment when using your private cell phone while on duty.

FOOTNOTES

1. Chapman v. Unemployment Compensation Board of Review, No. 1583 C.D.2010, Commonwealth Court of Pennsylvania, April 11, 2011, 1-7. Available at: <http://caselaw.findlaw.com/pa-commonwealth-court/1564906.html>. Accessed January 12, 2015.

2. Id., at 2.

3. Id., at 1.

4. Id., at 2.

5. Id.

6. Id.

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