In an unpublished decision issued July 22, 2016, the New Jersey Appellate Division ruled that an overnight residential counselor for developmentally disabled adults was properly disqualified from unemployment because of “severe misconduct” after having been found sleeping on the job. In affirming the Division of Unemployment’s denial of benefits, the court noted that this was the employee’s second documented violation “of his employer’s most basic rule: stay awake.” The decision, *James MacIsaac v. Board of Review and Center for Innovative Family Achievements, Inc.*, serves to remind health care employers of the importance of job descriptions and performance documentation, particularly with regard to patient care and safety.

Claimant MacIsaac’s job description, which he admitted having received, included the requirement to be “alert for ... [residents’] needs during the night, including therapeutic intervention and crisis management.” Nine months after his hire, MacIsaac was issued a corrective action notice and final warning for sleeping on the job. Two months later, a co-worker found MacIsaac asleep on his shift again and
reported it to management. He was fired three days later.

In New Jersey, severe misconduct disqualifying an employee from unemployment benefits includes “repeated violations of an employer’s rule or policy” N.J.S.A. 43:21-5 (b). The Appellate Division has interpreted this criterion “as requiring acts done intentionally, deliberately, and with malice.”

In these circumstance, and relying on the documentation, as well as testimony of McIsaac’s supervisors, the Division of Unemployment, found that McIsaac’s:

behavior by falling asleep during working hours jeopardized the safety and well-being of developmentally disabled individuals [who] were under his care. Hence, the evidence amply supports that the claimant’s conduct by failing to take steps to avoid falling asleep during his shift, was intentional, deliberate and malicious and constitutes severe misconduct.

The Appellate Division agreed.

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