

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD  
P O Box 944275  
SACRAMENTO CA 94244-2750



LINDA ~~SPACE~~  
c/o UNEMPLOYMENT HELP CENTER LTD  
Claimant-Appellant

KAISER FOUNDATION HOSPITAL  
c/o UC EXPRESS  
Employer

Case No.: **AO-294692**

OA Decision No.: 4282353  
EDD: 0410 BYB: 02/26/2012

## DECISION

Attached is the Appeals Board decision in the above-captioned case issued by Board Panel members:

**ALBERTO TORRICO**

**KATHLEEN HOWARD**

This is the final decision by the Appeals Board. The Appeals Board has no authority to reconsider this decision. If you disagree with the decision, please refer to the information attachment which outlines your rights.

UNEMPLOYMENT HELP CENTER LTD  
PO BOX 367  
SILVERDALE, PA 18962

Date Mailed: **SEP 18 2012**

Dear Mr. [Name]:

I am pleased to inform you that your application for membership in the National Association of Realtors has been approved. You will receive your membership card and other materials in the next few weeks.

Yours truly,  
[Signature]

MEMBERSHIP

The National Association of Realtors is a national organization of real estate professionals. It is the largest and most influential organization in the real estate industry. Membership in the Association provides you with many benefits, including access to the Multiple Listing Service (MLS), the ability to participate in the National Real Estate Conference, and the opportunity to receive the National Real Estate Award.

As a member of the Association, you will be able to network with other real estate professionals, share information, and gain access to a wide range of resources. You will also be able to participate in the Association's various programs and activities, which are designed to help you succeed in your real estate business.

If you have any questions or need more information, please contact your local Realtor or the National Association of Realtors. We are committed to providing you with the highest quality of service and support.

The National Association of Realtors is a non-profit organization that is dedicated to promoting the interests of its members and the public. We are committed to providing a high level of service and support to our members, and we are committed to maintaining the highest standards of ethics and integrity in the real estate industry.

As a member of the Association, you will be able to participate in the Association's various programs and activities, which are designed to help you succeed in your real estate business. You will also be able to receive the National Real Estate Award, which is the highest honor in the real estate industry.

If you have any questions or need more information, please contact your local Realtor or the National Association of Realtors. We are committed to providing you with the highest quality of service and support.

Case No.: AO-294692  
Claimant: LINDA [REDACTED]

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The claimant appealed from the decision of the administrative law judge that held the claimant disqualified for unemployment insurance benefits under section 1256 of the Unemployment Insurance Code.

### ISSUE STATEMENT

We adopt the administrative law judge's issue statement.

### FINDINGS OF FACT

We adopt the administrative law judge's findings of fact.

### REASONS FOR DECISION

We adopt paragraphs one through five of the administrative law judge's reasons for decision and add the following in reversing the appealed decision.

There must be a direct and proximate causal relationship between specific acts of misconduct and a discharge if a disqualification is to be assessed under section 1256 of the code. (Precedent Decision P-B-192.)

If weaker and less satisfactory evidence is offered when it was within the power of the party to produce stronger and more satisfactory evidence, the evidence offered should be viewed with distrust. (Evidence Code, section 412.)

Testimony given at the hearing under oath and subject to cross-examination is generally entitled to greater weight than hearsay statements, whether or not such statements are signed under penalty of perjury. (Precedent Decisions P-B-218, P-B-293, and P-B-378.)

In the instant case, the administrative law judge's findings of facts did not establish a direct and proximate causal relationship between specific acts of misconduct and the discharge effective on or about February 22, 2012. The administrative law judge's findings of facts referred generally to the employer's continuous receipt of complaints from co-workers, physicians, and patients which stated that the claimant was rude and abusive; and to the claimant's refusal to follow the employer's directions regarding where smoking was allowed. However, there were no findings of specific acts of misconduct that finally led to the

discharge. Pursuant to Precedent Decision P-B-192, a finding of specific acts of misconduct is necessary if a disqualification is to be assessed under code section 1256.

Moreover, it was within the employer's power to establish more definitely and conclusively the claimant's omissions in the last incident, and instead, the employer produced hearsay and circumstantial evidence. The employer did not introduce the member-patient or the physician who allegedly filed complaints against the claimant's manner of communication. The claimant's direct testimony that was given under oath, and subject to cross-examination, is entitled to greater weight.

In *Amador v. California Unemployment Insurance Appeals Board* (1984) 35 Cal.3d 671, the California Supreme Court held that an employee's refusal to comply with a reasonable rule or direction is not misconduct if the employee has good cause for his or her action. The claimant has the burden of proving good cause exists for the refusal to comply.

In the instant case, the preponderance of the evidence has not established that the claimant deliberately defies the employer's policy. The claimant therefore did not willfully or wantonly breach an important duty owed to the employer.

Mere inefficiency, unsatisfactory conduct, poor performance as the result of inability or incapacity, isolated instances of ordinary negligence or inadvertence, or good faith errors in judgment or discretion are not misconduct. (Precedent Decision P-B-3, citing *Maywood Glass Co. v. Stewart* (1959) 170 Cal.App.2d 719.)

While the employer's decision to discharge the claimant is not being questioned, the claimant's omission in the present case has shown, at the maximum, mere inefficiency, unsatisfactory conduct, poor performance as the result of inability or incapacity, or good faith errors in judgment or discretion. The claimant was discharged for reasons other than misconduct within the meaning of code section 1256 and is therefore not disqualified for benefits.

## DECISION

The decision of the administrative law judge is reversed. The claimant is not disqualified under code section 1256. Benefits are payable provided the claimant is otherwise eligible.