

Honesty is the Best Policy

Working Together

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May an employer fire an employee for lying about the reason for an absence? In a recent decision, the Connecticut Appellate Court said “yes.”

Orlando Martinez worked for Polar Industries as a machine operator. He was called for jury duty on October 21, 2013. His employer didn’t grant paid sick days, but did pay employees for jury service (as required by Connecticut law).

Martinez reported to the courthouse, but jury duty was cancelled. Rather than go to work, he went home, because he was not feeling well. The next day, when Martinez reported to work, his manager asked him about his absence, and he said he had been on jury duty.

Unfortunately for Martinez, the manager knew that jury duty had been cancelled for all prospective jurors scheduled on October 21, so he knew that Martinez was lying. Martinez was discharged for his dishonesty.

Martinez filed for unemployment compensation benefits, which were denied by the referee on the ground that his lie was “deliberate misconduct in wilful disregard of the employer’s interests,” which disqualifies the applicant under the unemployment regulations. He appealed to the Employment Security Board of Review, which affirmed the referee’s decision. Martinez appealed again, this time to the Superior Court, where the judge examined the record and, among other things, determined that the manager’s testimony – that he knew jury duty had been cancelled because he had looked it up on the judicial branch website – was not credible. The judge also found a lack of evidence that Polar Industries had a rule requiring an employee to return to work if jury duty was cancelled. The court overturned the decision of the Board of Review, finding it an “abuse of discretion.” Thus the case came to the Appellate Court.

The Appellate Court first held that the Superior Court had improperly substituted its own conclusions about the evidence for those of the Board. The plaintiff had not filed a motion to correct the Board’s factual findings, and in the absence of such a motion, the Superior Court was bound to accept the facts as found by the Board. The judge could not make his own determination as to witness credibility.

Turning to the issue of “wilful misconduct,” the Appellate Court found that the record supported the conclusion of the referee and the Board of Review that Martinez knew, when his manager asked him about his absence, that if he said he had been sick, he would not be paid, while if he said he had been on jury duty, he

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would be paid. By lying, he “deprived his employer of an opportunity to protect its own interest and acted in a manner inconsistent with the standards of behavior reasonably expected by his employer.” That constituted wilful misconduct under the applicable regulations. The absence of an employer rule requiring Martinez to return to work didn’t matter; it was the dishonesty that did him in, not the failure to return to work. (You can read the decision for yourself here.)

Suppose Martinez had been honest when asked about his absence? If he had said “I thought I was going to have jury duty, but it was cancelled, and I went home because I felt sick,” he would not have been paid for the day; but if he had been fired, he wouldn’t have been disqualified from receiving unemployment benefits. A single instance of “no show, no call” is not “wilful misconduct” under the regulations.

This was a case where honesty really would have been the best policy.

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