

When Is Someone “At Work”? Implications For Unemployment Compensation Eligibility (And Beyond)

Working Together

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Connecticut’s unemployment compensation statutes disqualify individuals from eligibility for benefits for certain misconduct, such as “willful misconduct in the course of employment.” A recent court case notes that the “course of employment” could include conduct by individuals in the course of grievance and other labor relations proceedings.

In *Morales v. Administrator, Unemployment Compensation*, 2013 WL 5716855 (Conn. Super. 2013), the plaintiff, a Bridgeport Fire Department employee and member of his union’s grievance committee, was in attendance at grievance arbitration hearings taking place during his work hours. The Department generally required employees to return to work unless such hearings ended at 2:30 P.M. or later. Between hearings, and in the presence of the plaintiff, the fire chief instructed the City’s labor relations officer to inform the plaintiff that he must return to work after the conclusion of these hearings. The plaintiff became agitated when so informed, held a tape recorder near the face of the labor relations officer, began shouting accusations, and attempted to engage the fire chief in this “exchange.” The union president advised the plaintiff to stop and a security guard was summoned, who told the plaintiff to calm down. Everyone except for the fire chief exited the room; however, the plaintiff returned to the room and (perhaps in an ill-advised move) told the fire chief that he was a punk and “I am going to get you.” The plaintiff apparently also called the chief a “slum lord.” The arbitration hearings were concluded by 12:45 PM. The plaintiff did not return to work (even though his work day was supposed to end at 4:30 PM).

The plaintiff was suspended for approximately six weeks for his misconduct. The plaintiff filed a claim for unemployment benefits, which was denied by the Unemployment Compensation Administrator. The Appeals Referee affirmed this decision. The Referee found that the employer had issued a reasonable order and the plaintiff did not have good cause for failing to return to work after the last arbitration hearing ended. The Referee concluded that the employer suspended the plaintiff for deliberate misconduct (i.e., the failure to return to work) which constituted “willful misconduct in the course of his employment,” and thus the plaintiff was ineligible for unemployment compensation benefits. On further appeal, the Board of Review affirmed the Referee’s decision. See **Board Case No.281-BR-08**. In addition to the failure to return to work, the Board of Review also relied upon the plaintiff’s outburst, especially in the context of the plaintiff’s prior suspensions

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for insubordination, as a separate act of insubordination and an additional basis for disqualification from benefits.

The plaintiff appealed the decision of the Board of Review to the Superior Court. In this appeal, the plaintiff did not dispute that the insults and behavior toward the fire chief constituted willful misconduct, which normally in itself would preclude him from receiving unemployment benefits. Rather, the plaintiff contested whether the misconduct occurred in the course of employment. The Court rejected the plaintiff’s arguments. The Court relied upon Connecticut Agency Regulation §31–236–26c(a), which provides that if an act occurs **during working hours**, at a place the employee may reasonably be, it is considered to be in the course of employment. The applicable collective bargaining agreement contemplated that the plaintiff, as a member of the union grievance committee, would be granted leave from duty to participate in grievance hearings and thus the misconduct occurred in a place the employee was permitted to be during working hours. The misconduct also took place while the plaintiff was fulfilling his duties for the employer’s benefit, as he was performing duties related to procedures for dispute resolution pursuant to the parties’ collective bargaining agreement. The incident regarding the outburst pertained directly to an order to return to work. The Court further noted that even if the conduct was considered to be “off duty,” Connecticut Agency Regulation §31–236–26c(c) provides that off-duty misconduct may be considered to be in the course of employment if committed by a “public trust employee,” which could include fire fighters or fire inspectors such as plaintiff. The Court noted that **both** the refusal to return to work and the outburst directed toward the fire chief could reasonably be construed to be willful misconduct in the course of employment.

WHAT DOES THIS ALL MEAN? Of course, the ruling in Morales is helpful to an employer contesting a claim for unemployment compensation when confronted with blatant misbehavior by an employee during a labor-related hearing taking place on the proverbial “company time.” While the Unemployment Compensation Act is a distinct statutory scheme (separate from an employer’s disciplinary proceedings), the logic in Morales would seem to dictate that discipline for such misbehavior could be “for cause.” However, employers must beware that sometimes there may be a fine line between appropriately disciplining for insubordinate misconduct that happens to take place at a labor hearing and being viewed as having inappropriately disciplined an employee for engaging in protected (albeit overly strident) concerted activity.

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