

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE  
CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE



DIVISION ONE  
FILED: 06/07/2011  
RUTH A. WILLINGHAM,  
CLERK  
BY: DLL

CHARLES T. JORDAN, JR., ) No. 1 CA-UB 09-0195  
 )  
Appellant, ) DEPARTMENT A  
 )  
v. )  
 )  
ARIZONA DEPARTMENT OF ECONOMIC ) **MEMORANDUM DECISION**  
SECURITY, an Agency, ) (Not for Publication -  
 ) Rule 28, Arizona Rules  
 ) of Civil Appellate  
 ) Procedure)  
 )  
and )  
 )  
AVALON HEALTH AND REHAB CENTER )  
TUCSON, LLC, )  
 )  
Appellees. )  
 )  
 )  
 )

Appeal from the Appeals Board of the Department of Economic  
Security of the State of Arizona

A.D.E.S. Appeals Board No. U-1118146-BR

**REVERSED AND REMANDED**

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Charles T. Jordan, Jr. Tucson  
Appellant *in Propria Persona*

Thomas C. Horne, Arizona Attorney General Tucson  
By Claudia Acosta Collings, Assistant Attorney General  
Attorneys for Appellee Arizona Department of Economic Security

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**T H O M P S O N**, Judge

¶1 Charles T. Jordan (Jordan) appeals from the denial of his claim for unemployment insurance benefits. The Arizona Department of Economic Security (ADES) Unemployment Insurance Appeals Board (the Board) determined that Jordan was disqualified from benefits because he was discharged for work-related misconduct. For the following reasons, we reverse and remand for an award of benefits.

**FACTUAL AND PROCEDURAL HISTORY**

¶2 Jordan was employed as an activity director at Avalon Health and Rehabilitation Center (Avalon), a skilled nursing facility in Tucson, for approximately seventeen months before he was discharged for violating an employer policy. Jordan was discharged because he overheard a patient tell another patient and family members that she had been beaten up by aides, and he did not immediately report the incident. Avalon had a policy which required employees to immediately report any allegations of resident abuse. Instead, Jordan told the patient to report the incident to an administrator, Mr. Steve Anderson (Anderson). She did so the following day. There had been no previous incidents where Jordan was alleged to have violated reporting policies.

¶3 Jordan applied for unemployment benefits, which were denied by an ADES department deputy. Jordan appealed, and a hearing was held before the ADES Appeal Tribunal. At the appeal tribunal hearing, Jordan testified that when the patient made the allegation, her family members told him that the incident had not

occurred; they had been with her when the abuse allegedly happened.

Jordan further testified that Avalon had not enforced the policy on another occasion when a patient had actually been abused in 2007. In that instance, according to Jordan, Avalon terminated the abuser but did not terminate a certified nursing assistant and nurse who were aware of but failed to report the incident. Anderson, who had not been employed by Avalon at that time, was not aware of the 2007 incident described by Jordan. Anderson further testified that, with regard to the incident which led to Jordan's discharge, the allegation that the patient had been beaten up by an aide was indeed unsubstantiated. The Appeal Tribunal reversed the deputy's determination and found that the applicant was discharged for reasons other than willful or negligent misconduct in connection with the employment. The administrative law judge focused on Jordan's lack of a previous record and the fact that previous violators of the reporting policy had received substantially less discipline for the same violation in his decision.

¶4 Avalon appealed. The Appeals Board found that Jordan had not established that the policy was not uniformly enforced and reversed the decision of the Appeal Tribunal. Jordan filed a request for review, and the Appeals Board affirmed its decision on review. Jordan timely appealed, and we granted the application for appeal.

## DISCUSSION

¶15 We are bound by the Board's reasonable findings of fact, but are not bound by its legal conclusions and independently determine whether the Board properly interpreted the law. *Mungia v. Dep't of Econ. Sec.*, 159 Ariz. 157, 159, 765 P.2d 559, 561 (App. 1988). We will affirm the Board's decision if any reasonable interpretation of the record supports it. *Bowman v. Ariz. Dep't of Econ. Sec.*, 182 Ariz. 543, 545, 898 P.2d 492, 494 (App. 1995). However, courts interpret the law and facts "liberally to grant benefits and narrowly to deny benefits" to further the public policy of providing benefits for unemployed workers. *Mungia*, 159 Ariz. at 162, 765 P.2d at 564 (App. 1998).

¶16 An employer has the burden of proving that an employee was discharged for disqualifying reasons. *Ross v. Ariz. Dep't of Econ. Sec.*, 171 Ariz. 128, 129, 829 P.2d 318, 319 (App. 1991); see also Ariz. Admin. Code (A.A.C.) R6-3-51190(B)(2). Among other reasons, an employee is disqualified from receiving benefits if his discharge was due to "willful or negligent misconduct connected with the employment." A.R.S. § 23-775(2) (1995). A.A.C. R6-3-51485, provides in relevant part:

1. An employee, discharged for violating a company rule, generally is considered discharged for misconduct connected with the work. This principle is based on the theory that when hired, an employee agrees to abide by the rules of his employer. This section covers rules peculiar to a particular employer, and not rules constituting the

general code of industrial misconduct. In order for misconduct connected with the work to be found, it must be determined that the claimant knew or should have known of the rule **and that the rule is reasonable and uniformly enforced.**

2. Recognition must be accorded to the type of business in which the employer is engaged and other surrounding circumstances. The rule must be reasonable in light of public policy and should not constitute an infringement upon the recognized rights and privileges of workers as individuals.

(Emphasis added).

¶7 The Appeal Tribunal had sufficient evidence to support its decision in favor of Jordan on the basis that Avalon had not met its burden of proof in regards to the alleged incident that resulted in Jordan's discharge and the uniform enforcement of its reporting policy. Our review of the record indicates that there was not substantial evidence to support the Board's finding that Avalon's policy was uniformly enforced. Accordingly, we find that the Board abused its discretion when it reversed the Appeal Tribunal.

¶8 We reverse the denial of benefits and remand for an award

of appropriate benefits to Jordan.

/s/

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JON W. THOMPSON, Judge

CONCURRING:

/s/

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PHILIP HALL, Presiding Judge

/s/

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LAWRENCE F. WINTHROP, Judge