

Four Years, and Five Hearings Later, Employee Prevails

Details

Written by Melissa Hanlon

By Melissa Hanlon

New Hampshire Employment Law Letter

June 2009

The New Hampshire Supreme Court recently reversed a ruling denying an employee's claim for unemployment compensation. The employee was fired in 2005 for alleged misconduct. Her quest for unemployment compensation took almost four years and five hearings.

Background Facts

Julie Motuzas was employed by Sam's Club in Hudson, New Hampshire working at the membership services desk. Ms. Motuzas was terminated by Sam's Club because of her interaction with a customer that stole from the store on October 5, 2005. Sam's Club alleged that Ms. Motuzas was complicit in the theft. Ms. Motuzas denied that allegation.

On October 5, 2005, an unidentified woman entered the store empty handed. She proceeded to the sales floor where she picked up a bag of dog food, and then she approached Ms. Motuzas at the membership services desk. She told Ms. Motuzas that she would like to return the dog food. Store policy requires any customer returning an item have a door slip to make a return. Door slips are given to the customer as they enter the store as evidence that the individual actually brought the item that they wish to return into the store. The policy also requires that a manager become involved in a return transaction when a customer does not have a door slip or a receipt. Because the customer did not have a door slip, Ms. Motuzas directed her to the entrance greeter. The entrance greeter gave the customer a door slip and the woman returned to membership services. The woman produced a crumpled partial receipt and asked for a refund for five bags of dog food. She explained that she had purchased five bags that were spoiled, and that she had spoken by telephone with the manager, Steve Flaherty, the day before. The customer told Motuzas that Mr. Flaherty instructed her to bring in any unopened bags and that she would be given a cash refund for all five bags of dog food. Ms. Motuzas began to process the cash refund. To do so, she had to summon a supervisor to authorize the cash transaction. The customer told the supervisor that she had observed children stealing DVDs, causing the supervisor to enter the authorization code and then leave to investigate the purported shop lifting. Ms. Motuzas finished the transaction and refunded \$163.68 in cash.

The customer then returned to the sales floor, loaded two 32 inch televisions onto a flatbed cart, and proceeded to the exit without paying. Footage from the store's security

camera shows the woman being stopped by the exit greeter. The woman then motioned towards the membership services desk. The greeter looked over to the desk, and then let the woman leave. As the woman exited the store, a manager, who was helping another customer carry out a large purchase, again asked the woman if she had a receipt. The manager later testified that Ms. Motuzas yelled over “she’s all set,” and therefore he let the woman exit with the stolen televisions. The manager testified that he returned to the membership desk shortly thereafter and asked Ms. Motuzas if the woman had paid for the televisions, and that Ms. Motuzas said that she had. The security footage shows the manager speaking with a different associate, not Ms. Motuzas, and that Ms. Motuzas was assisting another customer at that time. A store audit revealed that two televisions were missing, and Sam’s Club conducted an investigation. The investigators concluded that Ms. Motuzas had helped the suspect with the dog food refund, and that she had also helped the woman steal the televisions. Ms. Motuzas was terminated and the stated reason was “failure to follow proper refund policy...resulting in \$3,000+ loss to the store.”

After her termination, Ms. Motuzas applied for unemployment compensation. Sam’s Club objected to her application, stating that she was fired for misconduct. Ms. Motuzas’ application was initially granted. Sam’s Club appealed the decision to the New Hampshire Department of Employment Security Appeal Tribunal. The tribunal found that Ms. Motuzas had assisted the woman in leaving with the televisions, stripped her of the unemployment benefits and ordered Ms. Motuzas to repay the State for all benefits she had received. Ms. Motuzas filed a Motion to reopen the matter so that the security tapes could be reviewed, which was granted. Despite the fact that the security video footage directly contradicted the testimony of some of the store’s witnesses, the tribunal denied Ms. Motuzas’ request for benefits. Ms. Motuzas filed an appeal to the New Hampshire Department of Employment Security Appellate Board. The Appellate Board found that the tribunal was prejudiced by consideration of an additional and irrelevant theft by the same woman three days later (not involving Ms. Motuzas in any way). The case was remanded to the tribunal for another hearing.

After another hearing, the tribunal found that there was absolutely no evidence to support the allegation that Ms. Motuzas helped the woman steal the televisions. However, the tribunal found that the unemployment benefits could be denied based on Ms. Motuzas improper handling of the cash refund for the dog food. The benefits were denied on that basis. Both Ms. Motuzas’ appeal to the Appellate Board and Motion for Reconsideration were denied, so she filed an appeal with the New Hampshire Supreme Court.

Legal Analysis

The New Hampshire Supreme Court concluded Sam’s Club did not use the improper return as independent grounds for Ms. Motuzas’ termination. The record clearly showed that she was discharged for her perceived complicity in the television theft. It was impermissible for the denial of unemployment benefits to be predicated on alleged misconduct that was not the stated reason for Ms. Motuzas’ termination. Accordingly, the decision is reversed and Ms. Motuzas is entitled to unemployment compensation.

[Melissa Hanlon](#) is a member of the Sulloway & Hollis Labor and Employment practice group.