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Title 22@ Social Security

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Division 1@ Employment Development Department

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Subdivision 1@ Director of Employment Development

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Division 1@ Unemployment and Disability Compensation

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Part 1@ Unemployment Compensation

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Chapter 5@ UNEMPLOYMENT COMPENSATION BENEFITS

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Article 1@ ELIGIBILITY AND DISQUALIFICATIONS

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Section 1256-41@ Discharge for Misconduct -Union Relations

(a)

This section relates to discharge for misconduct due to an employee's union-related acts. Section 1256-30 of these regulations sets forth general principles also applicable under this section.

(b)

An employee may be discharged during the course of a trade dispute if the discharge is unequivocal. Lawful union activity is protected. An employee may engage in union-related activities, but if during the course of the union activity the employee engages in independent acts, such acts are misconduct if any of the following conditions exists: (1) The act is illegal. (2) The act violates the collective bargaining agreement between the employer and the employee's union. (3) The act violates an employer rule or a standard of behavior which the employer has the right to expect, as specified in Section 1256-32 of these regulations.

COMMENTS. Under subdivision (b) a trade dispute merely suspends, but does not sever the employer-employee relationship. Severance of the relationship during a trade dispute requires an unequivocal discharge. EXAMPLE 1. A's union was involved in a trade dispute with management. A left work because of the dispute and engaged in lawful activities in furtherance of the strike. However, A also addressed employees who continued to work and management personnel with obscene and insulting language and threw rocks at vehicles entering the plant. The

employer discharged A. A's acts went beyond the bound of A's right to peacefully picket. A's employer unequivocally discharged A because of A's independent acts of misconduct. The employer-employee relationship was severed. The discharge was for misconduct. COMMENTS. Under subdivision (b) an employee's act is not misconduct simply because he or she has participated in a trade dispute or in lawful picketing or engaged in any union-related act. The act itself must be considered misconduct against the employer. The use or failure to use or outcome of any grievance or arbitration procedure is not relevant on the issues. An employee may be discharged because his or her union has requested such action. If an employee is discharged because of acts against his or her union, the discharge is not for misconduct unless the acts also constitute misconduct against the employer. An employee who by his or her own act loses good standing in the union when this is required by the collective bargaining agreement for employment, and who is terminated, has constructively voluntarily left the job without good cause, rather than been discharged (see Section 1256-21 of these regulations). EXAMPLE 2. A strike was called by B's union and picket lines were set up. B took an active part in the strike. B attempted to dissuade other employees from entering the employer's plant, but never used profane language or threats of violence in doing so. The employer discharged B. B did picket energetically but peacefully as was B's constitutional right. At all times B's acts were a lawful exercise of the right to picket. Although B was discharged for strike activities, the acts did not constitute misconduct. COMMENTS. Under paragraph (2) of subdivision (b), knowledge of the collective bargaining agreement terms is imputed to the employee. The terms of the agreement establish a rule of conduct and the employee owes a duty to the employer to comply with these terms. If the employee violates this duty, his or her acts constitute misconduct. EXAMPLE 3. C, a

member of a union, was employed to work on the construction of a dam. One of the terms of the collective bargaining agreement was that the employees would not engage in strikes or picketing and the employer would not engage in a lockout. When grievances presented to the management were not resolved promptly, the business manager of the union called for a picket line. The next day C and all the other union members picketed. C was discharged. C's discharge was for misconduct because C violated the no-strike clause of the collective bargaining agreement. COMMENTS. Under paragraph (3) of subdivision (b), an employee owes a duty to his or her employer to comply with the employer's rules and to conduct himself or herself in an appropriate manner while on the job. If the employee disregards this duty and the employer's interests, he or she may be discharged for misconduct. However, as under paragraph (2) of subdivision (b), inadvertences, ordinary negligence in isolated instances, or good-faith errors in judgment or discretion are not misconduct. In such cases of ordinary negligence, misconduct may be found where the employee has been previously warned or reprimanded for prior similar acts of ordinary negligence and has the ability and capacity to perform satisfactorily. EXAMPLE 4. D often engaged in arguments with D's supervisor or other employees in the presence of customers. The employer warned D that continued instances of such conduct would not be tolerated. Later D's employer asked D to work a few minutes overtime without pay based on an oral agreement between the employer and the union that compensation would not be given for less than nine minutes overtime. D engaged in a heated argument with the employer in the presence of customers. The employer discharged D. Even though D was unaware of the oral agreement and felt that the union terms required D receive overtime compensation, D's conduct was not warranted especially since D had been previously warned. D's discharge was for misconduct.

(1)

The act is illegal.

(2)

The act violates the collective bargaining agreement between the employer and the employee's union.

(3)

The act violates an employer rule or a standard of behavior which the employer has the right to expect, as specified in Section 1256-32 of these regulations. COMMENTS.

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