

**STATE OF CONNECTICUT**  
**Department of Labor**  
**Employment Security Appeals Division**  
**Board of Review**  
**38 Wolcott Hill Road**  
**Wethersfield, CT 06109**  
**Telephone: (860) 566-3045 Fax: (860) 263-6977**

**Claimant's Name: PHILIP P. BURNELL**

**S.S. #: \*\*\*\*\***

**Employer's Name, Address & Reg. No.**

**BEST BUY STORES, LP**

**c/o Unemployment Services, LLC**

**P.O. Box 749000**

**Arvada, CO 80006-9000**

**E.R. #: 94-155-63**

**Board Case No.: 943-BR-06**

**Referee Case No.: 976-CC-06**

**Date mailed to interested**

**parties: August 25, 2006**

### **DECISION OF THE BOARD OF REVIEW**

#### **I. CASE HISTORY AND JURISDICTION**

The administrator ruled the claimant eligible for unemployment benefits effective April 16, 2006, and notified the employer of its chargeability on May 2, 2006. On May 22, 2006, the employer appealed the administrator's decision to the Hamden office of the appeals division. The appeals division scheduled a hearing of the appeal for June 21, 2006, which the claimant and the employer attended. By a decision issued on June 21, 2006, Principal Appeals Referee Herbert R. Pelley affirmed the administrator's ruling.

The employer filed a timely appeal to the board of review on July 12, 2006. Acting under authority contained in General Statutes § 31-249, we have reviewed the record in this appeal, including the tape recording of the referee's hearing.

#### **II. ISSUE**

The referee ruled that the employer discharged the claimant for reasons other than wilful misconduct in the course of his employment. In support of this appeal from the referee's decision, the employer reiterates its contention that the claimant purchased game consoles at a discount in order to earn a profit holding video game tournaments. The employer maintains that the claimant knew that he was violating company policy by using the employee discount to purchase equipment for use in a personal business. The employer also maintains that the claimant can organize future tournaments such that he will ultimately use the items he purchased for a profitable business.

The issue before the board is whether the employer discharged the claimant for wilful misconduct in the course of his employment.

### **III. PROVISIONS OF LAW**

Section 31-236(a)(2)(B) of the General Statutes provides that an individual shall be ineligible for benefits if he or she was discharged or suspended for wilful misconduct in the course of employment. Section 31-236(a)(16) of the General Statutes, as amended, defines wilful misconduct, for purposes of the Connecticut Unemployment Compensation Act, as:

deliberate misconduct in wilful disregard of the employer's interests, or a single, knowing violation of a reasonable and uniformly enforced rule or policy of the employer, when reasonably applied, provided such violation is not the result of the employee's incompetence and provided further, in the case of absence from work, 'wilful misconduct' means an employee must be absent without either good cause for the absence or notice to the employer which the employee could reasonably have provided under the circumstances on three separate instances within the twelve month period preceding his or her discharge. Except with regard to tardiness, each instance in which an employee is absent for one day or two consecutive days without either good cause for the absence or notice to the employer which the employee could reasonably have provided under the circumstances constitutes a 'separate instance'.

### **IV. FINDINGS OF FACT AND CONCLUSION OF LAW**

In the case before us, the claimant received an employee discount of \$2.70 on three video game consoles used in a tournament that he volunteered to organize. Although the tournament participants each contributed \$10 to defray the costs of the event, the referee found the claimant credible in testifying that he did not make a profit, did not intend to organize any similar tournaments, and has retained the consoles for his personal use. There is nothing in the record that would cause us to overturn the referee's credibility determination. The claimant made no attempt to hide the transaction, which only resulted in a very minimal discount for the claimant. We thus concur in the referee's conclusion that the claimant did not knowingly violate the employer's discount policy.

We find that the parties have not offered any argument in support of or in opposition to the appeal which would disturb the referee's findings of fact. We further find that the findings are supported by the record, and that the conclusion reached by the referee is consistent with those findings and the provisions of the Connecticut Unemployment Compensation Act. Accordingly, we adopt the referee's findings of fact and decision.

### **V. DISPOSITION AND ORDER**

The referee's decision is affirmed and the appeal is dismissed. The claimant is not disqualified from receiving unemployment compensation benefits effective April 16, 2006.

## **BOARD OF REVIEW**

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**Amy Stillman Kulig, Acting Chair,**

**ES Board of Review**

**In this decision, Board Member Florence Prescott concurs.**

**ASK:SNB:lm**

**IF YOU WISH TO APPEAL THIS DECISION, YOU MUST DO SO BY SEPTEMBER 25, 2006. SEE LAST PAGE FOR IMPORTANT INFORMATION REGARDING YOUR APPEAL RIGHTS.**