

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD



**SAN JOSE OFFICE OF APPEALS**  
2665 N FIRST ST STE 100  
SAN JOSE CA 95134

**(408) 232-3036**

**ASHLEY M GJOVIK**  
Claimant-Appellant

Case No. **7253819**

Issue(s): 1256

Date Appeal Filed: 03/07/2022

EDD: 0190 BYB: 09/05/2021

**Date and Place of Hearing(s):**  
(1) 07/14/2022

**Parties Appearing:**  
Claimant

**DECISION**

The decision in the above-captioned case appears on the following page(s).

The decision is final unless appealed within 30 calendar days from the date of mailing shown below. See the attached "Notice to Parties" for further information on how to file an appeal. If you are entitled to benefits and have a question regarding the payment of benefits, call EDD at 1-800-300-5616.

**Douglas Bird, Administrative Law Judge**

**ASHLEY M GJOVIK**



Date Mailed: **JUL 27 2022**

**Case No.: 7253819**

CLT/PET: Ashley M. Gjovik

Parties Appearing: Claimant

Parties Appearing by Written Statement: None

**San Jose Office of Appeals**

ALJ: Douglas Bird

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## ISSUE STATEMENT

The claimant appealed from a determination disqualifying the claimant for unemployment benefits under Unemployment Insurance Code section 1256. The issue in this case is whether the claimant was discharged for misconduct connected with the most recent work.

## FINDINGS OF FACT

Prior to the filing of the claim for benefits the claimant last work in September of 2021 as a senior engineering program manager at a salary of \$169,000 per year. She worked approximately six and a half years for the employer.

The claimant received notice from the vice president that she was being discharged. The notice was vague and incomplete and stated that the claimant had disclosed confidential information and had not fully participated in some investigation. Although the claimant requested specific information from the employer, no specific information was provided.

Prior to the separation of the employment the claimant received great performance reviews and prior to the separation the claimant received no oral or written warning notifying her that job was in jeopardy. At all times the claimant performed her job duties to the best of her ability.

## REASONS FOR DECISION

An individual is disqualified for benefits if he or she has been discharged for misconduct connected with his or her most recent work. (Unemployment Insurance Code, section 1256.)

The employer has the burden of proving misconduct. (*Prescod v. California Unemployment Insurance Appeals Board* (1976) 57 Cal.App.3d 29.)

Mere ineptitude or failure to work "up to par" is not misconduct. (Precedent Decision P-B-224.)

In Precedent Decisions P-B-214, P-B-222, and P-B-224 the appeals board held that poor work performance, inefficiency, ineptitude, or a failure to perform "up to par" does not normally constitute misconduct.

In Precedent Decision P-B-222 the claimant performed poorly despite being counseled, causing substantial financial loss to the employer. The appeals board found that the evidence did not establish a wilful disregard of the employer's interests and held his discharge was not for misconduct.

In this matter the evidence shows that the claimant was discharged for reasons other than misconduct connected with the most recent work. Since the claimant performed her job duties to the best of her ability and had not received warnings putting her on notice that her job was in jeopardy, the claimant was discharged for reasons other than misconduct and she is qualified for benefits under section 1256.

### DECISION

The department determination is reversed. The claimant is not disqualified from benefits under section 1256 of the code. Benefits are payable provided the claimant is otherwise eligible.

BARSU:mgDAB1/2