



ROBERT A. LORENZO  
CHIEF ADMINISTRATIVE LAW JUDGE

GEORGE T. DOLAN, JR.  
PRINCIPAL ADMINISTRATIVE LAW JUDGE

STATE OF NEW YORK  
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**DECISION AND NOTICE OF DECISION**

A.L.J. Case No. 001-08794

IN THE MATTER OF:

Mailed and Filed:

**JUL 20 2001**

S.S.A. No. 074-58-1832

WEISSBARTH ALTMAN  
MICHAELSON & SLAVET  
156 W 56TH ST  
NEW YORK NY 10019-3800

NOW LEGAL DEFENSE  
AND EDUCATION FUND  
395 HUDSON ST., 5TH FLOOR ✓  
NEW YORK NY 10014

Department of Labor Office: 811

Hearing Requested: May 29, 2001

**PLEASE TAKE NOTICE** that this decision has been duly mailed on the date listed above. If you appeared at the hearing and are not satisfied with this decision, you may appeal within **TWENTY DAYS** from the date this decision was mailed. Any party who failed to appear at the hearing has the right to apply to the local office to reopen the case. For the application to be granted, the party must apply within a reasonable time and must establish good cause for its failure to appear. **READ IMPORTANT INFORMATION ON REVERSE SIDE.**

**POR FAVOR TOME NOTA** que esta decisión ha sido debidamente enviada por correo en la fecha que aparece arriba. Si usted asistió a la audiencia y no está satisfecho con la decisión, usted puede apelar dentro de los **VEINTE DIAS** a partir de la fecha en que esta decisión fue enviada por correo. Cualquiera de las partes que falle en comparecer a la audiencia, tiene derecho de aplicar en su oficina local, para que reabran su caso. Para que la apelación sea aceptada, la parte interesada debe aplicar dentro de un periodo de tiempo razonable y debe establecer buena causa por no haber comparecido a la audiencia. **LEA INFORMACIÓN IMPORTANTE AL REVERSO.**

**ISSUES:** Loss of employment through misconduct.

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits effective March 17, 2001, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by the employer herein prior to March 17, 2001 cannot be used to establish a future claim for benefits. The claimant requested a hearing.

A hearing was held at which testimony was taken. There were appearances on behalf of the claimant.

**FINDINGS OF FACT:** The claimant worked as a receptionist for the accounting firm herein from July 24, 2000 through March 17, 2001. During her employment, she was absent due to court appearances, hospital visits, and doctors' visits related to a child custody dispute and domestic violence. She notified the employer of each of these absences. On March 15, 2001, the claimant intended to take her son to school, then report to work, when she was upset by a discussion with her son's father. She became depressed and began crying. Her friend called her doctor who advised that she go to the hospital. The claimant went to the hospital and was kept in a room for observation. Her friend telephoned the employer and indicated that the claimant would not be at work that day, and that she would probably not be in the following day either. The claimant was kept at the hospital for that whole day. The following morning, the claimant telephoned one of the partners and told him that she would not be in. She went to see her own doctor that day. Later in the day, the claimant was discharged on the basis of her absences.

**OPINION:** Pursuant to Labor Law § 593 (3), a claimant is disqualified from receiving benefits after having lost employment through misconduct in connection with that employment. Pursuant to Labor Law § 527, the wages paid in such employment cannot be used to establish a future claim for benefits.

The evidence in this case establishes that the claimant was discharged on the basis of her absences. The claimant's uncontroverted and credible testimony and her documentation establishes that her absences, including the final two, were related to a child custody dispute and domestic violence, and that she notified the employer of the absences. The claimant had compelling reasons for her absences and reasonably notified the employer. Therefore, her absences do not constitute misconduct. Her employment ended under non disqualifying conditions and she is eligible for benefits.

DECISION: The initial determination, disqualifying the claimant from receiving benefits effective March 17, 2001, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by the employer herein prior to March 17, 2001 cannot be used to establish a future claim for benefits, is overruled.

The claimant is allowed benefits with respect to the issues decided herein.

*Andrea S. Addison*  
/s/ ANDREA S ADDISON

**Administrative Law Judge**

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