

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

DYANN L WENDLAND
Claimant

APPEAL NO: 11A-UI-09880-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARDIOVASCULAR MEDICINE PC
Employer

**OC: 06/26/11
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Dyann L. Wendland (claimant) appealed a representative's July 18, 2011 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Cardiovascular Medicine, P.C. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 18, 2011. The claimant participated in the hearing. Lyndsay Heinrichs appeared on the employer's behalf and presented testimony from one other witness, Angie Moeller. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Affirmed. Benefits denied.

FINDINGS OF FACT:

The claimant started working for the employer on October 19, 2005. She worked full time as patient coordinator/registered nurse at the employer's clinic. Her last day of work was June 24, 2011. The employer discharged her on that date. The stated reason for the discharge was further issues of poor customer service and absenteeism after being given a final warning.

The employer had concerns regarding the claimant's communication and customer service for some time; there had been incidents in February and March 2010, and on her October 2010 performance review she received an unsatisfactory rating for these topics. On February 8, 2011 she was placed on probation due to both those concerns and a further concern that she was having too many sick days. After having some additional sick days and having some further communication issues in late April and early May, 2011, including an incident with a medical assistant, she was given a renewed and final probation and warning on May 6, 2011; she was aware that any future problems could result in discharge.

On June 23, 2011 the clinical nursing supervisor, Moeller, received a call and spoke to a patient and the granddaughter of the patient regarding a concern they had with a communication which had occurred on June 6. The patient and granddaughter both indicated that it was the claimant to whom they had spoken to obtain some discharge instruction, and they both indicated that the claimant had been rude and abrupt with them. The claimant did not recall speaking to this patient or the granddaughter, and indicated that the patient had not been seen by the doctor since 2009. However, the doctor had performed a procedure on the patient just the prior week, and the employer's computer records indicate that it was the claimant who had accessed the patient's records on June 6, and that the claimant had previously accessed that patient's records on two earlier occasions. While it would have been preferable to have more firsthand information identifying the claimant as the person who had spoken to the patient and the granddaughter on June 6, they are not under the control of the employer, and there the administrative law judge concludes that there has been sufficient corroborating circumstantial evidence presented to conclude that the secondhand testimony presented by the employer that it was the claimant who spoke to the patient and the granddaughter is more persuasive than the claimant's firsthand denial of having any recollection of the conversation.

Also considered by the employer in making its discharge decision was the fact that the claimant had two additional absences due to calling in sick since the May 6 warning, specifically on May 31 and June 22. However, the triggering event which caused the employer to move to discharge the claimant was receiving the complaint on June 23 regarding the claimant's treatment of the patient and her granddaughter on June 6.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The stated reason for the discharge was the claimant's communication and customer service issues, as well as the attendance issues, after prior warning. The administrative law judge specifically notes that the attendance issue itself would not be adequate to result in a

disqualification from unemployment insurance benefits. Absenteeism can constitute misconduct; however, to be misconduct, absences must be both excessive and unexcused. 871 IAC 24.32(7). Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to impose discipline up to or including discharge for the absence under its attendance policy. 871 IAC 24.32(7); Cosper, supra; Gaborit v. Employment Appeal Board, 734 N.W.2d 554 (Iowa App. 2007). Because the final absence was related to properly reported illness or other reasonable grounds, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct. However, the claimant's additional incident of unacceptable communication and customer service after the prior warnings shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's July 18, 2011 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of June 24, 2011. This disqualification continues until the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs