

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAUL D HASENWINKEL
Claimant

APPEAL NO: 10A-UI-06032-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERCY HOSPITAL
Employer

OC: 03/28/10

Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Paul D. Hasenwinkel (claimant) appealed a representative's April 19, 2010 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Mercy Hospital (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 9, 2010. The claimant participated in the hearing. Karen Malloy appeared on the employer's behalf and presented testimony from one other witness, Diane Stanton. 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?

FINDINGS OF FACT:

The claimant started working for the employer on or about January 2, 2007. He worked full time as a registered nurse at the employer's Des Moines, Iowa hospital on a 7:00 p.m. to 7:00 a.m. schedule, Tuesday, Wednesday, and Thursday. His last day of work was March 18, 2010. The employer discharged him on March 24, 2010. The reason asserted for the discharge was failing to complete mandatory education.

Periodically the employer expects the nurses, including the claimant, to complete certain mandatory education components. On or about January 30 the nurses, including the claimant, were instructed to complete a manual quiz regarding point of care testing for glucometers; on or about February 14 the nurses, including the claimant, were instructed to complete a computer training module regarding indwelling catheters. By March 16 the claimant had not completed either of these training programs. His wife had been in a serious car accident, resulting in his being off work on FMLA (Family Medical Leave) from March 3 through March 16. When he returned to work on March 17, he found a letter to him from Ms. Stanton, his unit's nursing director, dated March 16, instructing him that he needed to have the training completed by the Wednesday of the following week, which was March 24. That night of March 17 he did complete the glucometer manual quiz, but did not turn it in. He then worked the night of

March 18, still did not turn the manual quiz in, and did not complete the catheter computer training module.

His next scheduled work shift was Tuesday, March 23. He reported for work that night, but was confronted by Ms. Stanton, asking if he had completed the training. He indicated he had not finished the training, but that he planned to work on them during his shift that night. However, Ms. Stanton sent him home and did not allow him to work his shift or work on the competency trainings. Rather, she scheduled him to come in for a meeting at 8:45 a.m. on March 24. When he reported for that meeting but did not have the competency trainings completed, he was discharged.

In making its termination decision, the employer further considered that on August 20, 2007 he had been given a warning for failing to complete his hiring competency trainings done within a reasonable time, which he then cured. He had also been given a number of warnings for attendance issues, including a suspension for attendance on January 14, 2010.

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). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

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 reason cited by the employer for discharging the claimant is his failure to timely complete the competency trainings as assigned on January 30 and February 14. Under the circumstances of this case, the claimant's failure to more promptly complete these competency trainings was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion; he further was effectively blocked by the employer from having the full opportunity to complete the

trainings by the deadline initially communicated to him on March 17. Further, misconduct connotes volition. One way to establish intent is where an employee continues to repeat conduct for which he has been warned that he could be terminated. The claimant had not previously been effectively warned that his failure to ensure he had the competencies completed by the morning of March 24 would result in his termination. Higgins v. IDJS, 350 N.W.2d 187 (Iowa 1984). The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's April 19, 2010 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs