

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RACHEL K MAGILL
Claimant

APPEAL NO. 09A-UI-07032-E2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

KEOKUK COUNTY HEALTH CENTER
Employer

OC: 03/22/09
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated April 28, 2009, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 19, 2009. Claimant participated personally and was represented by Gregory Greiner, Attorney at Law. Employer participated. The following individuals testified: Rachel Magill, Kristin Reeves, Laverna Flanegen, Louise Avery, Heather Smithart, Jerlyn Bowers, Marsha White, Ray Brownsworth and Carol Schmidt. Exhibits A-G were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant was hired as an RN to work the floor and the emergency room for the employer. She was hired in August of 2008 and was discharged on March 20, 2009. The claimant was discharged after the employer determined that they did not feel that the patients would be safe when the claimant continued to be employed. The employer noted that the claimant received a written warning in December of 2008 for three medication errors she made during the period between September 2008 and December 2008. The claimant's probationary period was extended until January 21, 2009. The employer, through the chief of Nursing Operation Jerlyn Bowers, became concerned about the claimant's conduct at work on March 17, 2009. The employer identified a number of concerns. The employer felt the claimant was providing medical advice to a patient family member against policy on March 16. The claimant did not provide medical advice. The claimant dispensed Coumadin to a patient who was being seen after a fall. The claimant called the provider, Dr. Saxena, to try to get some information from the doctor as to how she should proceed. She gave the medication although there was some testimony that it could have been contraindicated. Carol Schmidt, a Nurse Practitioner, testified it was a judgment call and there were valid reasons for reaching a conclusion to dispense or withholding dispensing of the drug. On March 17 a patient came into

the hospital and the claimant had a CNA take the patient's vital signs. When the claimant returned, the CNA sent the patient to her provider outside of the hospital. The CNA improperly set the records in the shredding pile. The employer testified that the claimant, as the supervisor for the CNA, was responsible. The claimant did not ask to see the records to sign off and put information in them about the patient going to her provider. Ms Bower also learned about this time that on March 4, 2009 a patient came to the ER when the claimant was working there. The claimant asked the patient to check in the business office and then come back. There were no visible signs of distress. The claimant did not ask the patient his symptoms. Another nurse did and since he had chest pain he went to the ER without going through check-in at the business office. The claimant was not aware she needed to ask specific questions about a patient's medical conditions before referring them to the business office. The claimant received the one written warning in December of 2008 for medication errors.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such 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. On the other hand 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(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good-faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer did not believe the claimant would work out as an employee in their facility. They made a business decision based upon past experiences as well as the claimant's conduct. The employer is entitled to and has the right to make such judgments. The employer has not however proven misconduct. The evidence does not show that the claimant deliberately or wantonly disregarded the employer's interests or policies. There is no convincing evidence the claimant violated the policy about providing medical advice over the phone. The claimant had been warned of medication errors and none occurred after her warning. The claimant did ask a patient to go to the business office and did not follow up on the medical records of a patient. The claimant had not been warned of such conduct in the past and the employer did not provide convincing evidence of clear policies. As for the medication dispensed to the patient, there is evidence that the claimant made a judgment call within the parameters allowed by her profession. She did try to contact the doctor.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct.

DECISION:

The decision of the representative dated April 28, 2009, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

James Elliott
Administrative Law Judge

Decision Dated and Mailed

jfe/pjs