IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

LISA DAHNKE Claimant **MERCY HOSPITAL** Employer	**APPEAL 16A-UI-06051-CL-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 05/08/16** **Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 27, 2016 (reference 01) unemployment insurance decision that denied benefits based upon misconduct. The parties were properly notified about the hearing. A telephone hearing was held on June 15, 2016. Claimant participated. Employer participated through human resources business partner Michael Wilkinson and nurse manager Barbara Ditzler. Claimant's Exhibit A was received.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working at Cancer Care of Iowa City as a multi-skilled tech on April 13, 2009. Claimant was terminated on May 11, 2016.

From time to time, employer draws labs for individuals who are patients of medical providers who do not work at the facility. For example, a patient living in Iowa City who is treated by a doctor at the Mayo Clinic in Rochester may elect to have his labs drawn locally on a regular basis at Cancer Care of Iowa City. At times, this is done pursuant to the request of the "outside" medical provider.
Claimant was trained that if she received such a request, she was to ask an in-house physician for verbal approval of the request. Claimant was never trained that the request must be a written order or that the order must come in a certain format. After obtaining verbal approval, claimant had authorization to enter the verbal order into employer's computer system. The office procedure was that if a person working at the front desk received a written order from an outside provider for a patient's lab draws, he or she would gain verbal approval from an in-house physician before providing a copy of that order to a multi-skilled tech. The multi-skilled tech would then enter the verbal order into the computer system.

Employer has no written policy governing these situations. The only training claimant was provided on this procedure was from the multi-skilled tech who preceded her in the position.

In approximately December 2015, claimant was provided a November 18, 2015 letter from an outside medical provider ordering lab draws for a patient to be performed every four weeks. Claimant assumed that a front desk person asked Dr. Miller, an in-house physician, for verbal approval to draw the laws before providing her with the order. Claimant entered Dr. Miller's verbal order into the computer and drew the labs for the patient under this assumption during the next four months. Dr. Miller approved the labs being drawn in the computer system during a large batch of approvals even though no one had ever actually spoken to Dr. Miller about the labs being drawn and gained his verbal approval.

On May 6, 2016, a nurse was covering for claimant as she was absent. The patient in question came in to have labs drawn. When the nurse went into the computer system, she did not see that Dr. Miller or any other doctor had ordered labs for the person. The nurse spoke with Dr. Miller who stated he had no knowledge of the patient coming in for labs during the past four or five months and had never approved it.

When confronted about the situation, claimant explained she believed Dr. Miller had already verbally approved the labs being drawn every four weeks when she had been handed the November 18, 2015 letter. This is why claimant entered the verbal order into the computer and had drawn the labs.

Employer terminated claimant on May 11, 2016, for falsifying medical records.

Claimant had never been previously warned about similar conduct.

On May 12, 2016, Dr. Miller sent an email to employer's board of directors recommending it rehire claimant and consider finding a new nurse manager for the clinic staff.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.,* 275 N.W.2d 445, 448 (Iowa 1979).

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 Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.,* 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

Here, claimant followed the procedure she was trained to use and had been using throughout her seven years of employment. The mistake that occurred here is not claimant's fault—it is employer's fault. The evidence shows that employees did not cause this embarrassing mistake to occur—poor management did. Employer has no written policy or procedure addressing an important situation that arises in its clinic on a very regular basis. Multi-skilled techs have been working under the same procedure in the clinic for at least seven years. Apparently, employer has never performed any quality assurance audit during that time frame that revealed any issues. Claimant was never warned about her conduct or given any training or any feedback regarding the situation from any management-level employee at any time during her seven years of employment.

Employer has failed to establish claimant was terminated for misconduct.

DECISION:

The May 27, 2016 (reference 01) unemployment insurance decision is reversed. Claimant was separated for no disqualifying reason. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

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Christine A. Louis
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Decision Dated and Mailed

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