IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ROSINA A DELANTY
Claimant

ALEGENT HEALTH
Employer

APPEAL NO. 11A-UI-05505-LT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 03/27/11
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 18, 2011 (reference 01) decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on May 18, 2011. Claimant participated. Employer participated through human resources business partner Jennifer Smith and director of surgery Mary Hazen and was represented by Tom Kuiper of Talx. Employer's Exhibit 1 (pages 1 – 10) was admitted to the record.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full-time as a RN from June 2008 and was separated from employment on March 7, 2011 because she was not prepared for a GI procedure. She had all equipment she thought would be needed but the doctor decided he wanted banding equipment, which she obtained. On March 2, 2011 Hazen took complaints from coworker Julie who complained that claimant failed to make herself available to take a patient report because the patient should not have been down there yet. No recollection of that happening and denies that she said, "You were just over there with your nose in everyone else's business." Nurse Tina complained that claimant was "obnoxious and rude" the way she was giving a report to the ICU nurse after a GI procedure and that she expected the ICU nurse to do the charting she should have done herself. The normal procedure was to have an ICU nurse to help with sedation if there was only one GI nurse there for the procedure and to help the doctor. The ICU nurse would have reported to claimant about the patient's condition since she had provided care up to that point, not the other way around as the employer testified. She did not expect the ICU nurse to chart for her. No one confronted her before she was fired. Clinical lead Barb Warner spoke to the staff that complained but did not interview claimant or ask for her written response. These complaints were not detailed to claimant at the termination meeting either. Claimant has a gravelly voice and admits it can sound "rough" at times.

Hazen issued a written warning on November 9, 2010 about not wanting to take a patient to the x-ray technician who wanted to get a patient to that department. She said she did the best she could with the staff she had available at the time. She had been told not to leave only one nurse in the same-day surgery area as was the case then. On August 10, 2010 a prior supervisor Lynn Crowley warned her after a lab tech complained that claimant was confrontational and short with her on the phone. She was relaying the doctor's orders and urgency. She did not say she would reflect on her interactions with others. The employer alleged that on May 3, 2010 Crowley issued a verbal warning after a payroll technician complained claimant was rude and disrespectful to her but employer did not tell her about that complaint until her annual review in late May or June. She had become upset after the employer incorrectly handled payroll tax withholding for the second time in a row and the payroll clerk had accused her of causing the issue by providing different home addresses. Claimant's address in Council Bluffs did not change during that time and she did not live in Omaha.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment 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.

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 employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). When the record is composed solely of hearsay evidence, that evidence must be examined closely in light of the entire record. *Schmitz v. IDHS*, 461 N.W.2d 603, 607 (Iowa App. 1990). Both the quality and the quantity of the evidence must be evaluated to see whether it rises to the necessary levels of trustworthiness, credibility, and accuracy required by a reasonably prudent person in the conduct of serious affairs. See, Iowa Code § 17A.14 (1). In making the evaluation, the fact-finder should conduct a common sense evaluation of (1) the nature of the hearsay; (2) the availability of better evidence; (3) the cost of acquiring better information; (4) the need for precision; and (5) the administrative policy to be fulfilled. *Schmitz*, 461 N.W.2d at 608.

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. The claimant's testimony is credible that her voice tone is such that it could be misinterpreted and she adequately rebutted the employer's hearsay allegations. Given that the employer often did not confront her at all in order to give her a chance to respond, did not always give her details of complaints, or waited for some time before confronting her, her lack of recollection is not unreasonable and is resolved in her favor. Benefits are allowed.

DECISION:

The April 18, 2011 (reference 01) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs