

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHEILA J LEMON**  
Claimant

**APPEAL NO: 09A-UI-05113-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TRINITY REGIONAL MEDICAL CENTER**  
Employer

**OC: 03/01/09**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Trinity Regional Medical Center (employer) appealed a representative's March 23, 2009 decision (reference 01) that concluded Sheila J. Lemon (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 28, 2009. The claimant participated in the hearing. Ted Vaughn appeared on the employer's behalf and presented testimony from one other witness, Char Nelson. During the hearing, Employer's Exhibit 1 was entered into evidence. Based on the evidence, the arguments of the parties, a review of the law, and assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, 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 August 23, 1999. Since approximately 2001 she worked full time as a patient registration clerk. Her last day of work was March 3, 2009. The employer discharged her on that date. The reason asserted for the discharge was a complaint regarding a patient interaction.

On or about March 2 the employer received a complaint that on an unknown date a patient had been preregistering for an MRI who was going to be undergoing an unspecified type of orthopedic surgery in the future. The complaint indicated that during the claimant's conversation with this patient the claimant commented, "I hope you walk out of here after surgery." No further context of the conversation was provided, and the claimant had no particular recollection of having had this discussion with a patient. The patient apparently took the claimant's comment as some backwards comment or question about the competency of the surgeon who was going to be performing the procedure, resulting in the complaint being registered with the employer. No information was presented as to whether there was even reference to or discussion about any particular surgeon.

The claimant had received a number of various warnings during her employment, but had not had a warning regarding inappropriate interactions with patients since March 3, 2006. Her more recent warnings, most recently February 12, 2009, related to interactions between herself and coworkers and her supervisor. However, due to the prior general history of warnings plus the complaint from the family in March 2009, the employer determined to discharge the claimant.

#### **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 the complaint from the patient after the prior general warning history. Conduct asserted to be disqualifying misconduct must be both specific and current. Greene v. Employment Appeal Board, 426 N.W.2d 659 (Iowa App. 1988); West v. Employment Appeal Board, 489 N.W.2d 731 (Iowa 1992). The employer has not presented sufficient specific evidence to allow the claimant to adequately defend herself or for the administrative law judge to conclude that the incident was "current." Further, without further evidence of context, the statement reported by the patient could equally be interpreted as a statement of well-wishing; while the patient apparently construed it otherwise, there has not been sufficient evidence of context provided under which the administrative law judge could conclude that the patient's interpretation was the intended meaning or even a reasonable interpretation. 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 March 23, 2009 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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