IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

BARI L LLOYD
Claimant

GRX NORWALK INC
Employer

APPEAL NO: 10A-UI-14556-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 09/19/10
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

GRX Norwalk, Inc. / Medicap Pharmacy (employer) appealed a representative's October 14, 2010 decision (reference 03) that concluded Bari L. Lloyd (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 December 8, 2010. This appeal was consolidated for hearing with one related appeal, 10A-UI-14555-DT. The claimant participated in the hearing and was represented by Ted Marks, Attorney at Law. Alicia Perez of Merit Resources appeared on the employer's behalf and presented testimony from two witnesses, Kristen McKibben and Stephanie Fenster. 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 October 28, 2008. Since about February 2010 she worked full time as a relief or float pharmacist in the employer's 13 pharmacy locations, but primarily in the employer's Norwalk, Iowa pharmacy. Her last day of work was September 16, 2010. The employer discharged her on that date. The reason asserted for the discharge was too many errors and not properly following the verification policy.

The employer had recently had a number of discussions with the claimant regarding some errors. On September 2 she was given a written warning for two incidents, one on August 27 where she did not catch a dispensing error where there was a confusion between oxycontin and oxycodeine, and a medication which was dispensed at the wrong strength on July 19, discovered when it was refilled on August 4. Her most recent written warning prior to September 2 was October 13, 2009. It was not specified to her that the September 2 warning was to serve as a final warning, and that an additional error would result in discharge.

On September 13 and September 14 the employer discovered two more errors. The first was where a prescription was entered under the wrong patient. There was a father and son who were both customers, living at the same address. The prescription was entered on September 10 under the wrong patient as the date of birth was not verified. The second error, found on September 14, was a prescription which was filled on August 9. However, the variety of the prescription that was to have been dispensed was to contain acetaminophen, not aspirin. The error was discovered when the prescription was being refilled on September 14. The claimant should have noted that the medication code of the medication dispensed did not match the code of the prescription.

Upon discovery of the additional two errors, the employer discharged 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 was her repeated dispensing errors. The mere fact that an employee might have various incidents of unsatisfactory job performance does not establish the necessary element of intent; misconduct connotes volition. A failure in job performance is not misconduct unless it is intentional. Huntoon, supra; Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The September 2 warning did not make it clear that the claimant was nearing discharge, so that further violations could be considered intentional. Further, the error discovered on September 14, which was more similar to the errors addressed in the September 2 warning, had actually occurred prior to the September 2 warning; the September 2 warning would not have been effective to seek to prevent that error or to treat it as intentional. The error of not verifying the birth date of the

patient, where there were two patients of the same name at the same address, was a different type of error than the errors previously addressed with the claimant. While the employer had a good business reason for discharging the claimant, it 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 October 14, 2010 decision (reference 03) 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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