

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

APRIL D SHIELDS
Claimant

APPEAL NO: 14A-UI-09842-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 08/17/14

Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Care Initiatives (employer) appealed a representative's September 11, 2014 decision (reference 01) that concluded April D. Shields (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 October 10, 2014. The claimant participated in the hearing. Treve Lumsden of Equifax/TALX Employer Services appeared on the employer's behalf and presented testimony from two witnesses, Brandon Kranovich and Linda Grinstead. 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?

OUTCOME:

Affirmed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on July 3, 2013. She worked full time as a licensed practical nurse (LPN). Her last day of work was on August 12, 2014. The employer discharged her on August 19, 2014. The reason asserted for the discharge was failure to follow doctor's order, failure to properly document medications and treatments, and failure to properly identify and act upon an emergency situation.

The final incident asserted by the employer was with regard to the change of dressing on a resident; the doctor's orders specified that the dressing needed to be cut closely to be along the side of three skin wounds on the resident. Whomever changed the dressing on October 14 made the dressing too large, causing damage to the healthy skin which was discovered on October 15. The employer asserted that the claimant was the person who had last changed the dressing. However, the dressing needed to be changed daily, and it is clear that the claimant

last worked on October 12. The claimant had no recollection of the dressing or resident in question. The employer has not reconciled how the claimant could be responsible for the issue discovered on October 15 when she had not worked since October 12.

The employer further asserted that on August 15 it completed an audit for the month of July and concluded that there were 32 medications and treatments which the claimant had failed to properly document. The employer provided no specifics of these either to the claimant at the time of discharge or during the hearing, thereby effectively depriving the claimant of a meaningful opportunity to rebut the assertion and defend herself.

Finally, the employer asserted that on August 11 the claimant was working a shift from 6:00 a.m. to 2:00 p.m. as a charge nurse. At about 7:00 a.m., when the claimant was handling medications, a certified nursing aide (CNA) came to her and indicated that a resident's face did not look right. The claimant asked if the aide had taken the resident's vitals, and the aide went back to the resident. About 15 – 20 minutes later the aide returned and indicated that while the vitals did not seem off, the resident still did not look right. The claimant went with the aide back to the resident and began to check the resident. Another charge nurse then joined the claimant and the aide, and told the claimant she would handle the matter, so that the claimant could return to handling the medications. It was then determined that the resident was suffering a pulmonary embolism, and the resident was transported to the hospital. The employer concluded that the claimant should have responded more promptly to the initial inquiry by the aide.

The claimant had been given a coaching on February 17, 2014 for not properly delivering medications, and had been given a final written warning on August 5 for a lack of cooperation and teamwork.

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. Rule 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. Rule 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. Rule 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 are the concerns regarding following the doctor's orders on the dressing, the allegations regarding the documentation, and the issue regarding responding to the aide's concern on August 11. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant was responsible for the problem with the wound dressing. As to the assertion regarding the documentation issues, 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). A mere allegation of misconduct without corroboration is not sufficient to result in disqualification. Rule 871 IAC 24.32(9). Finally, with regard to the response to the aide's concern, the claimant did respond, albeit not on the initial inquiry by the aide; however, the employer has not demonstrated that the aide's initial inquiry was sufficient to have required the claimant to drop what she was doing to immediately check on the resident herself. She did respond properly and promptly when the aide raised the level of concern. 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 September 11, 2014 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.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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