IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

RAMON D AGUIRRE
Claimant

APPEAL NO. 12A-UI-04925-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOOD SAMARITAN SOCIETY INC
Employer

OC: 03/25/12
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 18, 2012 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on June 4, 2012. Claimant participated. Employer participated through DON Paula Clarke, nurse manager, Terri Hoogheem and director of human resources, K. D. Kalber. Employer's Exhibits 1 through 10 were admitted to the record.

ISSUE:

Did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a night shift charge nurse from April 15, 2011 and was separated from employment on February 2, 2012. On January 16 claimant called Clarke to complain about Hoogheem not responding to written questions and paperwork and her becoming upset with him on when he confronted her about the issues. During the conversation with Clark he mentioned that the weekend of December 23, 2011 he observed CNA Marie cup her hand and remove it from the residents' cigarette drawer of the nurses' station and put it in her left jacket pocket. He did not see cigarettes in her possession. He was busy but later confronted Marie and said a resident had complained he was missing cigarettes. He told her he would probably have to report this. He wrote a note about the issue and left it on Hoogheem's desk and told Marie about it. She denied the conduct and told him he had no proof she took anything. He told her if she wanted cigarettes to ask him for cigarettes or money rather than take them from residents. He was fired for failure to report a suspected theft. His other warnings were related to medication errors and lack of alarm bracelet placement but none were related to mandatory reporting.

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.

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).

A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the incident under its policy. Since the claimant did not actually witness a theft and reported what he thought he saw, even though

Hoogheem did not see the note, the employer has not established that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. A warning for medication errors or alarm bracelet placement is not similar to mandatory reporting and the employer's simple accrual of a certain number of warnings counting towards discharge does not establish repeated negligence or deliberation and is not dispositive of the issue of misconduct for the purpose of determining eligibility for unemployment insurance benefits. Benefits are allowed.

DECISION:

The April 18, 2012 (reference 01) decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed. The benefits withheld shall be paid, provided he is otherwise eligible.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

dml/css