

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMY J CARTEE
Claimant

APPEAL NO. 13A-UI-12261-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE IOWA CLINIC PC
Employer

OC: 09/29/13
Claimant: Appellant (2)

871 IAC 24.1(113) – Layoff

STATEMENT OF THE CASE:

Amy Cartee filed a timely appeal from the October 22, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on November 21, 2013. Ms. Cartee participated. Marian Klein represented the employer. Exhibits One through Five, A and B were received into evidence.

ISSUE:

Whether Ms. Cartee separated from the employment for a reason that disqualifies her for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a medical clinic. Amy Cartee was employed by The Iowa Clinic, P.C., as a full-time Registered Nurse from 2010 and last performed work for the employer on August 2, 2013. The employer assigned Ms. Cartee to assist Dr. Prashanth Sekhar. On July 18, 2013, Kathryn Johnson, Human Resources Director, notified Ms. Cartee in writing that employer would be laying Ms. Cartee off at the end of business on August 29, 2013. The notice of layoff was prompted by Dr. Sekhar impending departure from The Iowa Clinic.

On Friday, August 2, 2013, Des Moines Police Officers arrested Ms. Cartee at work and charged her with nine counts of obtaining prescription medication by fraud, aggravated misdemeanor. A judge had found probable cause for the arrest on July 23, 2013. It is unclear why Des Moines police waited until August 2 to arrest Ms. Cartee and equally unclear as to why they elected to arrest Ms. Cartee at her place of employment. None of the nine criminal charges involved conduct in the course of the employment. Ms. Cartee posted bond and was released on bond shortly after the arrest.

On Sunday, August 4, 2013, Ms. Cartee telephoned a Floor Manager at the Iowa Clinic. The Floor Manager instructed Ms. Cartee to report to the human resources department on Monday, August 5, 2013. On August 5, Ms. Cartee reported to the human resource department and met with Ms. Johnson. Also present on behalf of the employer was a legal representative.

Ms. Johnson attempted to question Ms. Cartee about the arrest and the pending criminal charges. Ms. Cartee declined to discuss the matter upon the advice of legal counsel. Ms. Cartee provided the employer with the phone number for her attorney. Ms. Johnson told Ms. Cartee that she was being placed on administrative leave.

The employer did not conduct its own investigation into the off-duty conduct that factored in the arrest.

On August 8, 2013, Ms. Johnson notified Ms. Cartee by telephone that her position was being eliminated effective that day. On August 9, 2013, Ms. Johnson met with Ms. Cartee. At that time, Ms. Johnson presented Ms. Cartee with a document that ended her employment effective August 8, 2013. The first paragraph of the document states as follows:

On July 18, 2013, you, Jill Villalobos and I discuss that, with the departure of Dr. Sekhar, your position was to be eliminated effective August 29, 2013. This letter is to confirm our telephone conversation yesterday that your position with The Iowa Clinic, P.C. was eliminated effective August 8, 2013.

The document addressed severance pay and PTO pay to be paid to Ms. Cartee as well as information regarding various fringe benefits. Nowhere in the document did the employer indicate that Ms. Cartee was being discharged from the employment in connection with the August 2 arrest. However, Ms. Cartee and Ms. Johnson both understood that the arrest and pending charges had moved up the planned separation date.

The employer has an employee manual. The employer reviewed the manual with Ms. Cartee at the start of her employment. The manual was available to Ms. Cartee on the employer's intranet system. The manual contained a substance abuse policy that included the following provision:

Any employee convicted on a charge of illegal possession, use, distribution, purchase or sale of any controlled substance or alcohol while off The Iowa Clinic premises and off duty may be subject to discipline, up to and including discharge, where The Iowa Clinic concludes that such conduct adversely affects patient care or other services or adversely affects The Iowa Clinic's reputation or public image. In addition, The Iowa Clinic may impose discipline, up to and including discharge, for such off-duty conduct in the absence of a conviction where The Iowa Clinic has reason to believe those acts have been committed and concludes that such conduct adversely affects patient care or other services or otherwise adversely affects The Iowa Clinic's reputation or public image.

The employee handbook also contained a professional conduct policy that indicated failure to follow the professional conduct policy could result in discipline up to and including discharge from the employment. The handbook contained a corrective action policy that echoed the professional conduct policy.

REASONING AND CONCLUSIONS OF LAW:

Workforce Development rule 871 IAC 24.1(113)(a) and (c) provides as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

...

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

The employer has already made the decision to layoff Ms. Cartee, and provided written notice of the impending layoff to Ms. Cartee, weeks before Ms. Cartee's arrest on non-work related criminal charges. The employer's documentation of the separation indicates that the employer decided to move up the effective layoff date after Ms. Cartee's arrest. That decision did not transfer the impending layoff into a discharge from the employment. The evidence indicates that Ms. Cartee was laid off effective August 8, 2013. The layoff would not disqualify Ms. Cartee for unemployment insurance benefits. Ms. Cartee is eligible for benefits provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Cartee.

Even if the administrative law judge had found the separation to be based on a discharge, rather than a layoff, the employer has presented insufficient evidence to establish that such a discharge was based on misconduct in connection with the employment. See Iowa Code section 96.5(2)(a) (regarding discharges for misconduct) and Iowa Administrative Code section 871 – 24.32(1)(a) (defining misconduct). At the time the employer ended the employment, Ms. Cartee had been charged with, but not convicted of, several criminal offenses. While the nature of the alleged offenses, if proved, made Ms. Cartee's continuing in the employment problematic, none of the alleged offenses had not been proved at the time the employer ended the employment. Nor had the employer conducted any meaningful investigation into the matters to determine whether the allegations were true.

DECISION:

The Agency representative's October 22, 2013, reference 01, decision is reversed. The claimant was laid off effective August 8, 2013. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs