

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SNEZANO SMAILBEGOVIC
Claimant

APPEAL NO: 10A-UI-14552-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ANKENY HEALTH CARE ENTERPRISES
Employer

OC: 09/12/10
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Ankeny Health Care Enterprises, L.L.C. / Sunny View Care Center (employer) appealed a representative's October 14, 2010 decision (reference 01) that concluded Snezano Smailbegovic (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 7, 2010. The claimant participated in the hearing. Greg Friedrich appeared on the employer's behalf and presented testimony from two other witnesses, Rachel Boardman and Deb Koedam. 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 September 12, 2005. Since about September 2009 she worked full time as a certified medications aide (CMA) at the employer's long-term and skilled care nursing facility. Her last day of work was September 14, 2010. The employer discharged her on September 20, 2010. The reason asserted for the discharge was because she was not medically qualified to perform the functions of a job into which the employer had determined to transfer her.

The employer concluded to transfer the claimant from her CMA position into that of a certified nursing aide (CNA). The reason for this was that it concluded that the claimant had misreported the administration of nasal spray to a resident on September 10 and September 11. In making this determination the employer relied primarily on the report from a nurse who did not participate in the hearing. The claimant maintained that she had administered the nasal spray as she recorded on the records.

The employer did not discharge the claimant for the medical record issue, but rather determined to transfer her at her same rate of pay to the CNA job. The claimant did not refuse the CNA

position, but voiced concern that due to back issues she might not be able to perform the duties of that job, which had significantly more lifting requirements than the CMA position. As a result, the employer sent the claimant to its occupational health doctor. On September 16 the doctor issued a determination that the claimant was not medically qualified to do the functions of the CNA job. Consequently, on September 20 the employer informed the claimant that her employment was ended.

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 employer's occupational health doctor's determination that she was not medically qualified to do the CNA job. Being medically unable to perform assigned work is not misconduct. Huntoon, supra; 871 IAC 24.32(5).

While the employer did not directly discharge the claimant for the medical records issue, given that matter's close approximation to the separation, the administrative law judge will also review whether that would serve as a basis for disqualification. The employer relies exclusively on the second-hand account from a nurse; however, without that information being provided first-hand, the administrative law judge is unable to ascertain whether the nurse might have been mistaken, whether she is credible, or whether the employer's witness might have misinterpreted or misunderstood aspects of her report. 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 in fact falsified the medications report.

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 October 14, 2010 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

ld/pjs