

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATINA D WIGGINS
Claimant

APPEAL NO. 09A-UI-05240-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

**Original Claim: 02/22/09
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Care Initiatives (employer) appealed a representative's March 23, 2009 decision (reference 01) that concluded Matina D. Wiggins (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 April 30, 2009. The claimant participated in the hearing. Josh Burrows of TALX Employer Services appeared on the employer's behalf and presented testimony from two witnesses, Steve Dowd and Maureena Prakash. 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 July 3, 2008. She worked full time as a staff nurse/licensed practical nurse (LPN) in the employer's Coralville, Iowa, nursing and rehabilitation center. She typically worked the evening shifts from 2:00 p.m. to 10:00 p.m., Monday through Friday. Her last day of work was February 19, 2009. The employer discharged her on February 26, 2009. The reason asserted for the discharge was breach of confidentiality.

Prior to February 19, the only warnings given to the claimant were two warnings for attendance. On February 19, there had been some discussion between the claimant and her supervisor regarding a concern that an incident report on a fall previously prepared by the claimant was not complete, but no action was taken on that date on that issue. On February 20, the claimant was informed she was being suspended for three days due to arranging with another nurse to work over to cover a call-in on the night of February 19.

A meeting was arranged on February 25 for the claimant to come in and sign the suspension paperwork and for a discussion about the incomplete incident report. During that discussion, the employer explained that what was missing from the report was a report of the resident's vital

signs. The claimant explained in the meeting that the incident report did not include the vital signs as the resident had been too agitated to obtain the readings, and that she had separately noted this in her nurse's notes. The employer then indicated that this was acceptable under the circumstances.

However, during the discussion, the claimant retrieved a new incident report regarding the fall from her bag she had brought from home. When her supervisor had told her on February 19 that the report was insufficient but had not said in what way, the claimant had taken a blank form home and had been working on it there to try to figure out what information she needed to include that she had not originally. No one else saw the form while she had it away from the employer's premises. When she pulled the now-completed new form out of her bag on February 25, the employer accused her of improperly having removed the employer's records from the premises without permission, and of a breach of confidentiality. As a result of this conclusion, the employer discharged the claimant on February 26.

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 that 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 that 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 conclusion that she had improperly removed a record from the premises and breached confidentiality. Under the circumstances of this case, the claimant's conduct was at worst the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good-faith error in judgment or discretion. The employer has not established that the taking of a blank form home and completing it in the privacy of her home was substantial misbehavior, as compared to inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an

isolated instance, or a good-faith error in judgment or discretion. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). 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 March 23, 2009 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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