

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRACY MCMULLEN
Claimant

APPEAL NO: 12A-UI-05456-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALEGENT HEALTH
Employer

OC: 04-15-12
Claimant: Respondent (2R)

Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 4, 2012, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 1, 2012. The claimant participated in the hearing. Jennifer Smith, Human Resources Business Partner; Judy Ambrose, Operations Director of Diagnostic Center; and Tom Kuiper, Employer Representative, participated in the hearing on behalf of the employer. Employer's Exhibits One and Two were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time diagnostic associate for Alegent Health from December 17, 2007 to March 16, 2012. She was discharged following two incidents that occurred March 12, 2012. The first incident involved the claimant sending a blood sample to the lab without labeling it. The second incident occurred when the claimant placed a blood sample in the transit tube station and left for the day without insuring the blood sample actually was taken by the transit tube station to the lab. The sample was labeled but was only good for a certain period of time and when it was discovered several hours later it had expired and was unusable. The claimant received a final written warning November 16, 2011, because she sent unlabeled specimens to the lab November 3 and November 5, 2011, which caused the patients to have to have their blood redrawn (Employer's Exhibit One). Under employee comments the claimant stated, "I'm working on my labeling issues as well as I am slowing down, wearing glasses and getting used to the lab processes" (Employer's Exhibit One). The warning stated "that further performance problems may lead to more serious action up to and including discharge" (Employer's Exhibit One). On September 6, 2011, the claimant received a written warning because she used a blue specimen tube instead of a lavender specimen tube and the patient's blood had to be redrawn (Employer's Exhibit Two). There are different agents in each

colored tube used in the processing of each test. Later that day a different specimen tube was left at the nurse's station in the transit tube station and the patient's blood had to be redrawn (Employer's Exhibit Two). On August 31, 2011, the claimant drew blood in the light green specimen tube instead of the dark green tube and the patient's blood had to be redrawn (Employer's Exhibit Two). The claimant received a verbal warning May 7, 2010, for listing an incorrect date for a blood bank patient who was going to surgery and the patient's blood had to be redrawn because it is critical that the patient's blood type be stated correctly in case blood is needed during the surgery. She received a verbal warning August 27, 2010, for placing the wrong patient's name on the specimen tube. She also received a verbal warning September 2, 2010, for an unlabeled specimen tube. The employer terminated the claimant's employment March 16, 2012, for repeated acts of negligence

The claimant has claimed and received unemployment insurance benefits since her separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

Iowa Code section 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 proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant made repeated labeling errors and was responsible for other performance issues between August 30, 2011 and March 12, 2012. Proper labeling was an integral and routine essential function of the claimant's job as a diagnostic associate and she failed to consistently perform those duties in the proper and approved manner which resulted in several patients having to have their blood redrawn. Additionally, labeling mix-ups put the patients at risk of not having the proper test done or not having the correct test result applied to the correct patient. Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The May 4, 2012, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css