

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARLO M WESTERLUND

Claimant

APPEAL NO: 13A-UI-06593-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOOD SAMARITAN SOCIETY INC

Employer

OC: 04/28/13

Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Good Samaritan Society, Inc. (employer) appealed a representative's May 24, 2013 decision (reference 01) that concluded Marlo M. Westerlund (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 July 16, 2013. The claimant participated in the hearing and was represented by Tom Stamets, attorney at law. Janice Foote appeared on the employer's behalf and presented testimony from one other witness, Brandi Patrik. During the hearing, Employer's Exhibit One was entered into evidence. 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?

OUTCOME:

Affirmed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on February 14, 2008. She worked full time as an MDS coordinator at the employer's Red Oak, Iowa long-term care nursing facility. Her last day of work was April 26, 2013. The employer discharged her on that date. The reason asserted for the discharge was unsatisfactory job performance and falsification of a time record.

On or about April 25 the employer learned that there were two MDS forms that the claimant had submitted sometime the prior fall which had not been timely and were therefore denied, totaling about \$1,400.00. The employer had no details as to the actual dates of service involved or when the claimant filed the reports, effectively depriving the claimant from a meaningful opportunity to provide any explanation as to why they may have been late. The employer's primary issue, however, was that on or about April 25 the employer also learned that the

claimant had not attended the second day of a training conference on March 7; her time record for that week had shown that she recorded 5.5 hours for training on that date.

The claimant acknowledged that she had not gone to the second day of the training. The time record for that week had already been filled in for the training conference by an assistant director of nursing, and it had been given to the claimant for signature before she went to the conference. When she returned to work, she did not think of the fact that her actual hours on March 7 were different from what she had turned in in advance; further, she had put in extra time working on forms on March 5 and March 6 beyond what had been reflected on her time sheet which would have equaled approximately the hours that had been reported for March 7.

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 job performance issues from the reports filed in approximately the fall of 2012 and the concern about the falsification of the time record for March 7. Conduct asserted to be disqualifying misconduct must be specific and current. *Greene v. Employment Appeal Board*, 426 N.W.2d 659 (Iowa App. 1988); *West v. Employment Appeal Board*, 489 N.W.2d 731 (Iowa 1992). The general conclusion that the claimant filed two reports late sometime in the fall of 2012 is neither specific nor current. As to the falsification of the time record for March 7, under the circumstances of this case, the claimant's failure to go back and modify the time record to show the additional work time on March 5 and March 6 and to remove the conference time on March 7 was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence, or was a good faith error in judgment or discretion. 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 May 24, 2013 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