

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHERYL F IRMER-ROMANELLI
Claimant

APPEAL NO: 14A-UI-05405-D

**ADMINISTRATIVE LAW JUDGE
DECISION**

SELECT MEDICAL CORPORATION
Employer

OC: 10/27/13

Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Cheryl F. Irmer-Romanelli (claimant) appealed a representative's May 14, 2014 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with Select Medical Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held on June 17, 2014. The claimant participated in the hearing and presented testimony from one other witness, Mary Romanelli-Carlson. David Williams of Equifax/TALX Employer Services appeared on the employer's behalf and presented testimony from one witness, Anthony Borich. During the hearing, Employer's Exhibits One through Four were entered into evidence. This appeal was consolidated for hearing with one related appeal, 14A-UI-05406-D. 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:

Reversed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on March 3, 2014. She worked full time as case manager and fill-in admissions coordinator in the employer's acute care hospital and long-term care nursing facility. The facility did not actually start operation until March 28, 2014. Her last day of work was April 10, 2014. The employer discharged her on that date. The reason asserted for the discharge was putting the incorrect birth year on the information band of a patient when he was admitted on April 3. The claimant had verified the information with the patient, but the patient had incorrectly confirmed the information.

The employer also asserted that the claimant was responsible for missing signatures on documentation for the patient. The claimant had understood that the signatures were needed

before the patient was discharged from care, but understood that he would be a patient until after April 7. The patient was then discharged early on April 7 before the claimant had an opportunity to get the signatures from him.

The employer gave the claimant a warning on April 9 for the signatures that were missing on the patient who was discharged on April 7. No new issues occurred after April 9. The issue with the patient's arm band information had already been discovered on April 7 and fixed. However, on April 10 the employer determined to discharge the claimant.

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. Rule 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. Rule 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 errors that had occurred with the patient intake and documentation between April 3 and April 7. Misconduct connotes volition. A failure in job performance is not misconduct unless it is intentional. *Huntoon*, supra. There is no evidence the claimant intentionally failed to perform her duties as well as she was able under the existing conditions. Under the circumstances of this case, the claimant's failures were at worst the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence, or were due to good faith errors 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 14, 2014 decision (reference 01) is reversed. 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/css