IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JAIME R BEESON
Claimant

PRAIRIE PEDIATRICS PC
Employer

APPEAL NO: 08A-UI-08150-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 08/17/08 R: 01
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Jaime R. Beeson (claimant) appealed a representative's September 10, 2008 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with Prairie Pediatrics, P.C. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 29, 2008. The claimant participated in the hearing and was represented by Michele Lauters, attorney at law. Nadine Bergin appeared on the employer's behalf and presented testimony from two other witnesses, Jennifer Jelken and Darlene Salmen. During the hearing, Employer's Exhibits One and Two were 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?

FINDINGS OF FACT:

The claimant started working for the employer on May 14, 2007. She worked full time as a registered nurse in the employer's medical clinic. Her last day of work was August 19, 2008. The employer discharged her on that date. The reason asserted for the discharge was that the claimant had been rude to a patient's parent after prior warning regarding negative communication with patients' parents.

During the course of the claimant's employment, there had been approximately three or four verbal discussions between the employer's management and the claimant regarding performance issues, which sometimes included questions as to her communication with patients' parents. She was given a written performance evaluation review on May 20 addressing a number of performance issues; one item which she was informed needed more improvement was with patient communication. She was advised that there would be a further review in one to three months "and if there is not significant improvement in the areas of concern . . . we would be looking at termination." As the three month period neared an end, the claimant had inquired of Ms. Bergin, the advanced registered nurse practitioner, as to whether

she needed to be looking for another job. Ms. Bergin had responded that there were still some issues such as documentation that needed continued work but that the claimant's performance was improving to the point she should not need to be thinking about looking for another job.

During the evening of August 11 a patient had been taken to a local hospital with a foot injury and an x-ray had been taken. At approximately 9:00 a.m. on August 12 the patient's mother called and left a voice mail message for the claimant inquiring about the x-ray results and indicating that she needed to have a note from the doctor faxed to her employer to cover the mother's absence from work the prior day. The claimant returned the call at approximately 9:15 a.m.; she advised the mother that the x-ray results from the prior evening were not yet available but that she would fax a note from the doctor to the mother's employer. At approximately 11:00 a.m. the mother called the claimant again and indicated that the fax had not come yet and her employer was getting upset; she further reinquired about the x-ray result. The claimant responded that a fax had been sent about 15 minutes previous, but that she would have the note refaxed; she further responded that the x-ray results were still not available from the hospital.

Shortly before noon the attending doctor attempted to directly get the x-ray information from the hospital but was informed the results were still not available. Over the lunch hour the patient's mother left an additional voice mail message for the claimant indicating that she had called the hospital directly and had been told the results were then ready for the doctor's office to access. Upon receipt of the message the claimant had the hospital information rechecked and was able to get the x-ray information. She recontacted the patient's mother shortly after 1:00 p.m. and advised the mother that the x-ray indicated that there was no bone break, and that home treatment of elevation, ibuprofen, and icing should continue.

Later that afternoon the patient's mother called and spoke first with Ms. Salmen, the business manager, and then with Ms. Jelken, the assistant nurse manager. The mother complained to them that the claimant had been rude in her phone conversations earlier that day. The complaint as understood by the employer was that the claimant had not contacted the mother in response to the first morning message so the mother called back at approximately 11:00 a.m. She reported to the employer that the claimant had been "snotty and bitchy" in saying that she had faxed the doctor's excuse at 10:45 a.m. but that she would fax it again. She was further frustrated that she was not given x-ray results at that time. When the mother then called the hospital and learned that the results were available if the doctor would contact them, she concluded that the claimant had not made a proper inquiry into getting the results from the hospital and recontacted the claimant to indicate the hospital said the results were available. The mother complained that when the claimant then did recontact her with the results, the claimant commented in a snotty way to the effect that they had spoken several times already that day.

The claimant was aware that a complaint call had come in that day because Ms. Bergin had briefly spoken to her after getting the call from the mother to determine who had been handling that patient's case that day. Another nurse who had been working in the same area as the claimant that day had overheard the claimant's conversations with the mother that day; when she learned about the complaint by the mother, her comment to the claimant was that the claimant had handled the case appropriately and that she had not sounded rude.

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 complaint that she had been rude to the patient's mother after she had previously been warned that performance issues, including prior problems with patient or patient parent communications, was placing her employment in some jeopardy. The employer relies exclusively on the second-hand account of the alleged rudeness through Ms. Jelken and somewhat from Ms. Salmen; however, particularly given the inherently subjective nature of the judgment on the part of the listener of whether a particular communication was "rude," without that listener's information being provided first-hand, the administrative law judge is unable to ascertain whether the listener, here the patient's mother, might have been mistaken, whether her perception might have been tainted by an incorrect belief that the x-ray information had been available earlier but that the claimant had just been "putting her off," whether she is credible, or whether the employer's witnesses might have misinterpreted or misunderstood aspects of the mother's complaint. The claimant provided her own first-hand testimony at hearing denying that she had been rude and indicating that she had been attentive to getting the x-ray result information to the mother as quickly as it could be obtained; she further presented some corroborating second-hand testimony attributed to a witness who would have overheard her communications with the mother to the effect that this other "listener" had not heard the claimant being rude. 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 based upon the evidence provided a reasonable person would objectively conclude that the claimant in fact was rude toward the patient's mother. The

employer has not met its burden to show disqualifying misconduct. Cosper, supra. Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's September 10, 2008 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.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

ld/pjs