

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMANDA R STROH
Claimant

APPEAL NO. 10A-UI-12409-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA PHYSICIANS CLINIC MEDICAL
Employer

OC: 08/01/10
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Amanda Stroh (claimant) appealed a representative's August 26, 2010 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Iowa Physicians Clinic Medical (employer) for wanton carelessness in performing her work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 18, 2010. The claimant participated personally. The employer participated by Bridgette Skinner, Clinic Manager.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on April 9, 2009, as a full-time laboratory provider nurse. The employer had a handbook but the claimant did not receive a copy. The employer issued the claimant a verbal warning on June 8, 2009, for giving an elderly individual a vaccine. The employer told the claimant there was a different vaccine for people over 64 years of age. The employer did not feel the claimant was completely at fault because it had not told her of the two different vaccines. In May 2010, the employer placed the claimant in the position of laboratory technician and licensed practical nurse. Due to staffing issues in June 2010, the employer told the claimant she was going to work as a triage nurse and laboratory technician. The claimant had never been a triage nurse and was given no protocol to follow.

In July 2010, the claimant made errors but they were not mentioned to the claimant. She made a transcription error in medication on July 8, 2010. On July 15, 2010, she followed a previous provider's instructions regarding dosage, not knowing the employer had a different protocol. On July 23, 2010, she gave an unidentified wound culture to the nurse who was supposed to prepare the label. On July 26, 2010, she was told to and gave an allergy injection to a patient without the employer giving her the proper protocol for missed injections. Lastly, On July 27,

2010, she told a physician about her job duties. The employer terminated the claimant on August 2, 2010.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for 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 proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as employer had not previously warned claimant about any of the issues leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Benefits are allowed.

DECISION:

The representative's August 26, 2010 decision (reference 01) is reversed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css