

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSICA V WEEKS

Claimant

APPEAL NO: 12A-UI-03576-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

APAC CUSTOMER SERVICES OF IOWA

Employer

OC: 02/26/12

Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Jessica V. Weeks (claimant) appealed a representative's March 30, 2012 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with APAC Customer Services of Iowa (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 30, 2012. The claimant participated in the hearing. Turkessa Hill appeared on the employer's behalf and presented testimony from two other witnesses, Catherine Hughes and Ana Svennevig. 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 June 11, 2003. She worked full-time as a team leader in the employer's Davenport, Iowa, call center. Her last day of work was February 28, 2012. The employer discharged her on that date. The reason asserted for the discharge was giving medicine to other employees.

On or about February 22, the employer received a report from a customer service representative that the claimant had given him medication believed to be illegal drugs on "several" occasions. When confronted, the claimant acknowledged that she had given some "muscle relaxers" to at least one employee. The employer believed the medication to have been a prescription medication and controlled substance, vicodin. The claimant denied ever distributing any prescription medication or controlled substance. Rather, the medication she admitted to have distributed, which she referred to as a "muscle relaxer," was a medication she

had purchased over-the-counter, sodium naproxen, sold as Aleve. Because the employer believed that she had distributed prescription medication that was a controlled substance, the employer discharged 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 that 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 that 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 belief that she had distributed a prescription medication which was a controlled substance. The employer relies exclusively on the second-hand account from a customer service representative; however, without that information being provided first-hand, the administrative law judge is unable to ascertain whether the representative might have been mistaken, whether he is credible, or whether the employer's witness might have misinterpreted or misunderstood aspects of the representative's report. 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 the claimant did distribute a prescription medication that was a controlled substance. Under the circumstances of this case, the claimant's incidental distribution of an over-the-counter medication was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and 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 March 30, 2012 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/kjw