

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LYNN A WASHINGTON
Claimant

APPEAL NO. 11A-UI-05220-N

**ADMINISTRATIVE LAW JUDGE
DECISION**

PATHLAB LTD
Employer

OC: 03/13/11
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Mr. Lynn Washington filed an appeal from a representative's decision dated April 8, 2011, reference 01, which denied unemployment insurance benefits. After due notice was issued, a hearing was held in Council Bluffs, Iowa, on May 26, 2011. The claimant participated personally. Participating as a witness was Ms. Jamie Stanley, former employee. The employer participated by Ms. Missy Gorham, supervisor, and Ms. Sheri Claussen, administrative secretary.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Lynn Washington was employed by Pathlabs, Ltd. most recently from February 23, 2010, until March 14, 2011, when he was discharged for a blood labeling error. Mr. Washington worked as a full-time phlebotomist and was paid by the hour. His immediate supervisor was Missy Gorham.

Mr. Washington was discharged on March 14, 2011, after it was determined that he had improperly labeled a blood specimen taken from a patient. The misidentified specimen had been sent to be evaluated and the misidentification caused serious concern and had potentially jeopardized the health of the seriously ill patient in question.

Mr. Washington is an experienced phlebotomist and had previously been employed by the company. The claimant was aware of the required steps to be taken to ensure that blood draws are taken from the proper patient and correctly identified before being sent to the laboratory for analysis. Phlebotomists are required to personally check the ID bracelet of each patient that they are drawing blood from and to personally check to ensure that the identification on the blood vial correctly identifies the correct patient with the correct blood specimen. Because of the seriousness of the error, the potential harm to the patient, and the potential liability to

Pathlab, Ltd., the decision was made to terminate Mr. Washington from employment without following the normal progressive discipline used for lesser offenses. Prior to his discharge, Mr. Washington had only been counseled on one occasion about incorrectly labeling a urine specimen in the past.

It is the claimant's position that the decision to terminate or to impose a lesser form of discipline is discretionary with the employer and that the error was not intentional but more in the nature of a "good-faith error in judgment or discretion."

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits.

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. See Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant, but whether the claimant is entitled to unemployment insurance benefits. Infante v. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconducts warrants the denial of unemployment insurance benefits

are two separate decisions. See Pierce v. Iowa Department of Job Service, 425 N.W.2d 679 (Iowa App. 1988). Misconduct sufficient to warrant the denial of unemployment insurance benefits must be “substantial.” When based upon carelessness, the carelessness must indicate a “wrongful intent” or be “wanton” to be disqualifying in nature. See Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

Inasmuch as one of the primary and essential job duties of a phlebotomist is to correctly identify both the patient and the sample while drawing blood, the claimant's failure to do so demonstrated carelessness of a wanton degree. Strict and set procedures are in place that govern the specific identification of patients and samples and required the phlebotomist to carefully and methodically ensure that no errors are made in the identification of the patient or the blood sample. Phlebotomists are strictly required to verify the identity of the patient via wrist identification on the patient and to verify, in a similar manner, that each sample is correctly identified so that the sample can be later tested and the results applied to the correct patient.

While the administrative law judge is convinced that Mr. Washington did not intentionally make this error, his failure to ensure that he was taking a blood sample from the proper patient and to ensure that the sample was properly identified with the correct patient demonstrated a wanton carelessness in the performance of his duties that day. The employer was justified in escalating the claimant's disciplinary action to discharge. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated April 8, 2011, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured equal to ten times his weekly benefit amount, provided he meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw