

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARGARET A HARRIS
Claimant

APPEAL NO. 11A-UI-11683-SW

**ADMINISTRATIVE LAW JUDGE
DECISION**

CENTRAL IOWA HOSPITAL CORP
Employer

**OC: 08/07/11
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated August 31, 2011, reference 01, that concluded she was discharged for work-connected misconduct. An in-person hearing was held on October 10, 2011, in Des Moines, Iowa. The parties were properly notified about the hearing. The claimant participated in the hearing. Kami Petitgoue participated in the hearing on behalf of the employer with witnesses, Barb Owca, Lynae Millette, and Constance Duling. Exhibits One and Two and B through G were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as a clinical assistant at the Huxley Clinic from February 4, 1998, to August 10, 2011. Her supervisor at the time that she separated from employment was Lynae Millette, the clinic manager.

On December 1, 2010, the employer issued a written reprimand for providing inaccurate information to patients, taking too long with patients on the phone, and taking excessive time entering information in the computer system, which was later reduced to a verbal warning. On June 1, 2011, the employer placed the claimant on probation after a coworker reported that the claimant made a comment about her husband threatening to use a gun to solve the claimant's employment problems and employees expressed concern about the claimant creating a hostile working environment with comments about taking legal action.

On August 1, 2011, Millette met with the claimant because the claimant had asked a technician in the IT department to find out if someone had accessed her email on a day when she was off work. She did this because when she came back to work, she noticed several emails sent on her day off that had already been read when she checked her computer. The technician reported back to the claimant that someone had in fact accessed her email account on her day off. When Millette found out about it, she believed that the request should have gone to her. Millette alleged that the claimant was accusing coworkers of accessing her email. She was told not to pursue this any further with IT and not to make further comments. In fact, the claimant had not talked to any employees, other than the technician, about her email. The claimant followed Millette's instruction.

On August 5, 2011, the claimant had a conversation with an elderly and longtime patient of the clinic who had an appointment with her doctor. The patient has a hearing aid due to a hearing impairment. The claimant was in the process of taking another patient to the examination room when the patient grabbed her and gave her a kiss on the cheek. After taking the other patient to her room, she returned to the waiting room and greeted the elderly patient saying it had been a long time since she had seen her. The patient proceeded to tell the claimant about her medical issues and what the doctor had done for her. The patient commented that she did not know anyone at the clinic, referring to the staff. The claimant admitted there had been changes in the staff. When the patient asked if it was good or bad, the claimant replied that she did not know but things were fine and everything was okay. The patient then asked how her doctor was doing. The claimant replied that she would have to talk to the doctor about that. The patient then asked how the claimant was doing. The claimant was touched by her concern and could not continue the conversation, so she said "Betty, you're going to make me cry, but I need to get back to work." The claimant then left. Later, the patient's son who had accompanied his mother to the clinic reported to Millette that the claimant had told his mother that her doctor and the clinic's staff were mistreating the claimant. He reported that the claimant had gotten his mother upset that there was something wrong with the clinic and she was going to lose her doctor. The claimant did not make the comments attributed to her.

On August 8, 2011, Millette received a report from an employee that the claimant had told her that the claimant had filed an age discrimination lawsuit against the clinic and she should be prepared to be questioned. The claimant had been asked by a coworker outside of the clinic over the noon hour about whether she was going to do anything about how she was treated by the employer. The claimant had told the coworker that she had an attorney and could take action, but did not tell her that she needed to be prepared to be questioned.

On August 10, 2011, management notified the claimant that she was being terminated but could resign in lieu of termination. The claimant did not choose to resign. She was informed that she was being terminated due to her conversation with the elderly patient and talking to the employee about her lawsuit. On August 19, Millette mailed a written notice of termination to the claimant that included accusing coworkers of accessing her email and failing to log off her computer along with the reasons mentioned on August 10.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or

negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and the reliability of the evidence and by applying the proper standard and burden of proof. The claimant testified credibly regarding the three reasons for her discharge, and her testimony is entitled to greater weight than the employer evidence on these incidents, which was not based on personal knowledge.

First, I do not think the claimant did anything wrong by asking the IT technician to find out if someone had accessed her email while she was out of the office. Millette admitted that no employees had complained directly to her that the claimant had accused them of accessing her email.

Second, I am unconvinced that the claimant told the elderly patient that her doctor and clinic staff were treating her badly or the other comments attributed to her. Telling the patient that she would need to talk to the doctor about how the doctor was doing when the patient asked her was the proper response. It is quite possible that the patient misunderstood the claimant's comment about making her cry. I am unconvinced that the comment was made to upset the patient or to make her concerned about the clinic or her doctor.

Third, the report about the lawsuit was from an unidentified employee and the claimant testimony's about what transpired with an employee that she named and identified outweighs the employer's evidence on this point. Again, the evidence fails to show willful and substantial misconduct.

The employer has failed to meet its burden to prove the claimant was discharged for any current acts of work-connected misconduct as defined by the unemployment insurance law.

DECISION:

The unemployment insurance decision dated August 31, 2011, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw