IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

TRACY L VANDERSCHAAF
Claimant

BUENA VISTA REGIONAL MEDICAL CENTER
Employer

APPEAL NO. 09A-UI-17080-S2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 10/11/09
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Tracy VanDerSchaaf (claimant) appealed a representative's November 3, 2009 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Buena Vista Regional Medical Center (employer) for failure to perform satisfactory work of which she was capable. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 17, 2009. The claimant was represented by Mary Hamilton, Attorney at Law, and participated personally. The employer participated by Joan Kurtz, Director of Diagnostic Imaging Services, and Dawn Bach, Chief Clinical Officer. The employer offered and Exhibit One was received into evidence.

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 23, 2009 as a full-time magnetic resonance imaging supervisor. The claimant signed for receipt of the employer's handbook. The employer issued the claimant a written warning on April 23, 2009, for using poor judgment. The claimant followed the ordering physician's directions. The employer thought the claimant should have known the ordering physician wanted something else. Based on the facts of the incident the employer changed its policies. On May 7, 2009, the employer issued the claimant a verbal warning for poor performance. The employer did not notify the claimant in either instance that further infractions could result in termination from employment.

On October 4, 2009, the employer installed a new magnetic resonance imaging machine. Protocols had to be built into the new machine. The claimant was not given time to load the new protocols before being scheduled for patients. The claimant complained but her supervisor did not understand the problem. The supervisor did not tell the claimant she could refuse to see patients because the protocols were not loaded. Appointments for scans were taking longer

than normal. On October 9, 2009, the claimant discovered she would be seeing a patient that required protocols not on the machine. She scanned a patient for 3.61 hours without completing the procedure. The appointment was length because protocols were not loaded into the machine and the patient wanted to move around. The employer terminated the claimant on October 15, 2009. The employer thought the claimant should have refused to see the patient if the protocols were not loaded.

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). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer scheduled the claimant for patients without giving her the properly loaded equipment and then terminated her when she could not perform her job quickly. The employer did not provide any evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's November 3, 2009 decision (reference 01) is reversed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/css