

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BETH A DECOSTER
Claimant

APPEAL NO. 11A-UI-10440-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GENESIS HEALTH SYSTEM
Employer

OC: 07/10/11
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Beth A. DeCoster (claimant) appealed a representative's August 3, 2011 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with Genesis Health System (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 31, 2011. The claimant participated in the hearing. Linda Sanders appeared on the employer's behalf. Based on the evidence, the arguments of the parties, a review of the law, and assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, 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?

FINDINGS OF FACT:

The claimant started working for the employer in May 1997 as an aide, and as of August 20, 2001 she began working full-time as a registered nurse. The employer discharged her on July 14, 2011. The reason asserted for the discharge was an incident regarding an unlabeled specimen bottle while the claimant was on a final warning.

The claimant had been given a first final warning on May 26, 2010, and a second final warning on July 16, 2010; both warnings were a result of attendance issues, substantially due to the recent death of the claimant's father. The warnings indicated that the claimant could be discharged if there were any further violations in the next year. The year was due to expire on July 15, 2011.

On July 1 the claimant handled a patient and collected specimens to be sent to the lab. She specifically recalled putting the applicable label on the specimen bottle before setting it in the area for collection by lab personnel. When she returned to work on July 5, she saw the specimen bottle on the counter in the nurses' station, having been returned by the lab, and

immediately recognized what it was and that it had no label. She had no explanation as to how the label could have come off of the bottle if it had been properly applied.

The employer viewed this as a serious safety violation. The claimant had never had any prior issues regarding proper labeling or other safety violations. She was advised by her supervisors that had she not had the prior final warning still in effect for attendance, she would not have been fired, but would have only been given a warning for the label issue. However, since there was a prior final warning that was still in effect, 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 gravity of the incident and the number of prior violations prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

The reason cited by the employer for discharging the claimant is the safety violation regarding the unlabeled specimen while she was on a final warning, albeit for an attendance issue. Significantly, there was no current warning, only a warning for an unrelated issue almost a year prior. While the labeling issue was significant, and while the claimant may have ultimately been "responsible" for the proper labeling, the evidence does not establish that she completely failed to attempt to properly label the sample, but rather that in some way her effort failed. But for the prior, nearly year-old unrelated warning, the incident would not have led to her discharge. Under the circumstances of this case, the claimant's responsibility for the unlabeled sample 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 August 3, 2011 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