

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

TONI R SALSBERY
Claimant

APPEAL NO: 18A-UI-07070-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICAN EYECARE PC
Employer

**OC: 06/03/18
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Toni R. Salsberry, the claimant filed a timely appeal from a representative's unemployment insurance decision dated June 25, 2018, (reference 01) which denied unemployment insurance benefits, finding that the claimant failed to perform satisfactory work although she had the ability to do so. After due notice was provided, a telephone hearing was held on July 19, 2018. Claimant participated. Participating as a witness for the claimant was Ms. Jennifer Ketterer, claimant's sister and former fellow employee. Employer participated by Ms. Jamie Strong, Operations Manager and Ms. Andrea Sewell, Officer Manager. Employer's Exhibits A, B, C, E, and F were admitted into the hearing record. Employer's proposed Exhibit D, an anonymous witness statement, was not admitted into the hearing record but will remain with the administrative file.

ISSUE:

The issue is whether the claimant was discharged for work-connected misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Toni R. Salsberry was employed by American Eyecare, PC from February 6, 2017 until June 4, 2018, when she was discharged from employment. Ms. Salsberry was employed as a full-time Pre-test technician and was paid by the hour. Claimant's immediate supervisor was Ms. Andrea Sewell, Office Manager.

Ms. Salsberry was discharged on June 4, 2018, based upon the reports by employees that Ms. Salsberry had stated that she was not going to accompany patients for pre-testing and other administrative work that morning, because the other pre-test technician was "brown nosing" with company management and not performing her duties. Ms. Sewell confirmed that patients were in fact waiting and had not been brought forward by the claimant.

The company concluded that Ms. Salsberry's failure to do her job duties was intentional because she had stated that she would not do her job to Ms. Milligan in advance, and then followed through, by not performing her duties..

The employer also concluded that the reports from the workers were credible because there was a history of conflict between Ms. Salsberry and the other pre-test technician.

Ms. Salsberry had been verbally warned on many occasions that it was necessary for her to work compatibly with the other pre-test technician, and warned to be a "team player." In addition to the verbal warning, the employer had also noted this as an area that needed improvement in the claimant's evaluation.

The employer also concluded that the claimant was more focused on "who is doing more work", instead of working cohesively as a team.

The claimant denies that she had failed to perform her duties with patients that day. Ms. Salsberry believes that the statements made by other workers to management were contrived and untruthful. It is the claimant's position she performed all of her duties that day and her discharge was unjustified.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges the claimant for reasons constituting work-connected misconduct. Iowa Code section 96.5(2)a. 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. 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 willful wrong-doing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations that arise out of a worker's agreement of employment. Misconduct is a deliberate violation or disregard of the standards of behavior that the employer has a right to expect from its employees, or intentional and substantial disregard of the employer's interests and standards of behavior. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated instance, good-faith errors in judgment or discretion, are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

Here, the evidence in the record establishes the employer had often counseled Ms. Salsberry of the necessity that she work in a cooperative way with another worker who performed the same type of duties. Ms. Salsberry was counseled to work cooperatively and as a team player instead of focusing on issues such as who was required to do the most work and similar issues that were not productive. The employer emphasized the importance of the issue by placing it on the claimant's yearly evaluation as well.

The employer concluded that Ms. Salsberry had violated the subject of her warnings based upon statements of two employees. The statements corroborated each other and a personal inquiry by Ms. Sewell confirmed that the claimant was not taking patients for pre-testing as her job required. Ms. Salsberry's conduct was in disregard of the employer's interests and standards of behavior and constitutes job-connected misconduct. Accordingly, the claimant is disqualified for benefits until she has worked in and been paid for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

DECISION:

The representative's decision dated June 25, 2018, reference 01, is affirmed. Claimant was discharged for work-connected misconduct. Unemployment insurance benefits are withheld until the claimant has worked in and been paid for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn/rvs