

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSEPH BERDECIA

Claimant

APPEAL NO: 06A-UI-08729-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KNOXVILLE COMM HOSPITAL INC

Employer

**OC: 08/06/06 R: 02
Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Quit
Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Knoxville Community Hospital, Inc. (employer) appealed an unemployment insurance decision dated August 24, 2006, reference 01, which held that Joseph Berdecia (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 27, 2006. The claimant participated in the hearing while Robin Chemansky was in attendance. The employer participated through Anne Helwig, CEO; Chris McDanel, Director of Clinic Services; Brenda Madison, Director of Human Resources; and Attorney James Gilliam. Employer's Exhibits One through Six and Claimant's Exhibit A were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct prior to the effective date of his resignation and whether his voluntary separation from employment qualifies him to receive unemployment insurance benefits.

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 as a full-time physician on October 1, 2004 through January 9, 2006 when he gave his notice of resignation to be effective March 10, 2006. On December 31, 2005, the claimant filed a complaint of racial discrimination and harassment against the employer with the Iowa Civil Rights Commission. He stated that on December 10, 2005, Chris McDanel, the director of clinic services, stated to another employee that he was under observation by the administration because of multiple complaints of sexual harassment in the hospital. The claimant believes that Ms. McDanel has a problem with him because he is Hispanic. He claimed that he was not given examining rooms as requested while other physicians were given examining rooms. The claimant had his children at work with him and Ms. McDanel directed him to have the children wait in the lobby while other physicians had

family members, boyfriends and girlfriends in their offices with no action taken against them. Ms. McDanel refused to allow the claimant a vacation day so he could attend a court -ordered class for divorcing parents. The reason for the refusal was due to short staffing concerns but Ms. McDanel allowed another physician to take time off on another day which left the claimant and a physician assistant to work alone. Ms. McDanel yelled at the claimant in the hallway about a patient that needed to be seen who was sent to the clinic from the emergency department without screening. Two other incidents were mentioned in which the claimant reported he was treated unprofessionally by Ms. McDanel. The same information provided in his complaint to the Iowa Civil Rights Commission was mentioned in his resignation letter although he told the employer he was quitting due to racial discrimination, a negative working environment, false accusations, unethical and unprofessional treatment.

Prior to the effective date of his resignation, he was discharged on February 15, 2006 for disruption of clinic operations and removal of clinic property. He went on a non-work-related medical leave of absence on February 9, 2006 after providing the employer with a work release by Dr. Alda Knight which stated the claimant could not return to work through February 13, 2006. It was listed as a medical excuse but no further information was provided. He subsequently provided another excuse taking him off work through February 20, 2006. On February 13, 2006, he arrived in the hospital emergency room to treat an infant whose parents had called him. The claimant ordered the baby in for an outpatient x-ray. The employer advised him he was not allowed to treat any patients or write any orders until released to return to work and he left the facility. At approximately 6:30 a.m. on the following morning, he was seen in the clinic standing in the dark at the copy machine making copies. Ms. McDanel arrived at the facility and noticed the door to the room containing drug samples was unlocked and open when it should have been locked. Ms. McDanel asked employees if they had seen anyone in the drug room and employee Pat Wichhart reported she had just seen the claimant quickly leaving the clinic with two large bags full of items. An inventory of the sample drugs was done and the following items were missing: 30 packages of Lexapro (anti-depressant); two packages of Keteck (antibiotic); 11 bottles of Aciphex (stomach); and 20 packages of Rozerem (sleep). The employer also discovered a fetal Doppler missing; this is a piece of equipment costing approximately \$450.00. After consulting with the hospital attorney, the employer discharged the claimant and directed him to return the hospital property including keys, a pager, a cell phone, equipment, copies of patient records and medications.

The claimant filed a claim for unemployment insurance benefits effective August 6, 2006 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer or if the employer discharged him for work-connected misconduct. Iowa Code sections 96.5-1 and 96.5-2-a.

Rule 871 IAC 24.25 provides that, in general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. An employee quits his job when he intends to quit and carries out that intent by some overt act. Peck v. Employment Appeal Bd., 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). The claimant provided a written resignation on January 9, 2006 to be effective March 10, 2006. He contends he quit due to racial discrimination, a negative working environment, false accusations, unethical and

unprofessional treatment. The evidence provided by the claimant falls short of discrimination, let alone racial discrimination. The claimant acknowledged that any allegations of sexual harassment have to be investigated and the employer received a sexual harassment complaint about the claimant. Ms. McDanel admitted she yelled at the claimant in the hallway one time and she gave him time off to take the class but he eventually told her it was the wrong day and did not take the time.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code section 96.6-2. The evidence demonstrates the claimant voluntarily quit his employment due to personality issues with Ms. McDanel. The law presumes it is a quit without good cause attributable to the employer when an employee leaves because of a personality conflict with the supervisor. 871 IAC 24.25(22). The claimant has not satisfied his burden and benefits are denied as of March 10, 2006.

However, when an individual is discharged prior to an effective date of resignation, benefits are allowed from the last day worked until the effective date of the resignation, unless the claimant was discharged for work-connected misconduct. 871 IAC 24.25(38). The claimant was discharged on February 14, 2006 due to disruption of clinic operations and removal of clinic property.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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 claimant admitted he saw the door open to the drug sample room on February 24, 2006 and did not lock it or report it to anyone. He further admitted keeping drug samples in his office but the employer testified they are only to be kept locked in the drug sample room. The claimant admitted taking samples of Lexapro, Rozerem and Keteck from the clinic on February 14, 2006. He did not provide a written record of the number and type of medication samples he took and did not notify anyone that he had taken them. The hospital clearly keeps accurate records of the drug samples as demonstrated by its ability to provide an exact list of which medications were missing. At the time the claimant took these samples, he was an employee of the hospital and these samples were intended for patients of the hospital. This is true regardless of whether or not he is the physician that signed for the samples. The claimant testified that he gave these drug samples to family members and patients. These samples were hospital property and not intended for his family members or unknown persons he called patients. The claimant's conduct was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated August 24, 2006, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$2,160.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs