

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEANNIE L LAUBE
Claimant

APPEAL NO. 11A-UI-05708-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**“ACC ENTERPRISES LLC
“CEDAR HEALTH**
Employer

**OC: 03/20/11
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

ACC Enterprises, LLC d/b/a Cedar Health filed a timely appeal from a representative's decision dated April 20, 2011, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on July 12, 2011. Claimant participated personally. Participating on behalf of the claimant was Ms. Judith O'Donohoe, Attorney at Law. Participating as witnesses were Sandy Jones, Former CNA, JoEllen Murraray, Resident Family Member and Millissa Hinders, Former MDS Coordinator. The employer participated by C. Bradley Price, Attorney at Law and witness, Dennis Sanvig, Administrator. Employer's Exhibit A was received into evidence. Claimant's Exhibit One was offered but not received. Claimant's Exhibit Two was offered and received into evidence.

ISSUE:

The issue is whether the evidence in the record establishes 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: Ms. Jeannie Laube was employed by ACC Enterprises, LLC d/b/a Cedar Health from February 22, 2008 until March 24, 2011 when she was discharged from employment. Ms. Laube was initially hired as a licensed practical nurse working as a floor nurse but subsequently accepted a promotion to MDS Coordinator/Assistant Director of Nursing approximately six months after her hire. Ms. Laube was employed on a full-time basis. Her immediate supervisor was Darla Spratt, Director of Nursing.

Ms. Laube was discharged on March 24, 2011 based upon the employer's belief that she had made inflammatory and disruptive statements to employees, a resident and a family member of a resident about being discharged from employment.

Ms. Laube, the claimant, had been informed by the organization's former Director of Nursing, Darla Spratt, that it was the intention of the facility to replace Ms. Laube in the position of MDS

Coordinator with a registered nurse. It appears that the organization found that certain duties related to the MDS Coordinator position were not being fulfilled by Ms. Laube, however, the employer had not issued the claimant any written warnings or memorandums that her performance was less than satisfactory. Ms. Spratt indicated to the claimant that the director would attempt to find a different position for Ms. Laube if she was willing to accept one. It appears that the employer envisioned the claimant taking a floor nurse position at the same rate of pay and hours. It appears the employer believed that replacing the claimant with a registered nurse would allow the new person to perform skin assessments and psychotropic medication assessments of residents that were not currently being performed up to the employer's expectations. Ms. Laube showed some interest in transferring to a different position within the organization and also had made inquiries of other perspective employers believing that her employment as MDS Coordinator was coming to an end.

On March 20, 2011, other individuals informed the claimant that her job position was being advertised in a local newspaper (See Exhibit Two). Based upon statements made by her immediate supervisor, the director of nursing, Ms. Laube concluded that she was being replaced as interviews were being scheduled for her position. Ms. Laube did not initiate conversations about her apparent separation from employment with other employees but responded to repeated inquiries made by other workers. The claimant stated to a resident and a resident's family member her belief that she was being replaced. These statements were made while comforting the individual and in an apparent attempt to transition the resident and family member to the fact that another person may be performing the claimant's duties in the near future.

News of the claimant's apparent departure began to circulate within the facility causing employees, and at least one resident and family member to become upset, the employer concluded that the claimant must have been initiating these conversations and causing a disruption and thus discharged the claimant for acting "unprofessionally."

Ms. Laube admits that she told a resident and a resident's family member that she was being replaced but denies doing so to cause disruption or disharmony.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

Iowa Code § 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 this matter. See Iowa Code § 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. If the employer does not furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

In this matter the employer made a management decision to discharge Ms. Laube based on dissension and disharmony that had developed because staff members, a resident and a resident's family member as well as the claimant had reasonably concluded that the claimant was being separated from her position as MDS Coordinator at Cedar Health. The employer had been dissatisfied at Ms. Laube's performance and the facilities Director of Nursing had stated to Ms. Laube that the employer wanted to replace her with a registered nurse to perform the duties of the MDS Coordinator position. Although the administrator was dissatisfied with the claimant's performance regarding skin assessments and psychotropic medication assessments, the claimant had not been specifically warned or counseled. When there was mention made of placing more emphasis on these job responsibilities the claimant responded that she needed more time in her work schedule to do so and the employer concluded that the claimant was unwilling to perform those duties unless she was paid more rather than concluding the claimant was indicating that she needed authorization for some overtime hours.

After a number of references were made to the claimant about replacing her in her job position by the Director of Nursing and the claimant's job position had been advertised in the local newspaper and interviews had been scheduled, the claimant reasonably concluded that she was in fact going to be replaced in her job position. Although the claimant had made some

inquiries about transferring to a different job position with this employer or with a new employer no agreement for continuing employment or new employment had been made.

In her sworn testimony the claimant denies complaining or causing disharmony with employees about what the claimant reasonably considered to be her imminent separation from employment. Claimant also testified that she did not intentionally cause disharmony or dissatisfaction by mentioning that fact to a resident or a resident's family member when visiting with them. Claimant testified that her intention was to ease the transition by informing the resident and family member that someone else would be performing those duties soon. When the employer became aware of increasing disharmony the employer concluded that the disharmony had been caused by the claimant's statements. The employer also believed that the claimant had made statements that "the administrator would be sorry" and that the claimant was retaining legal counsel. A decision was therefore made to terminate Ms. Laube from her employment.

In this case the claimant appeared personally and provided sworn firsthand testimony. In contrast the evidence presented by the employer was primarily hearsay in nature. Although hearsay is admissible in administrative proceedings, it cannot be accorded the same weight as sworn direct testimony.

The question before the administrative law judge is not whether the employer made a correct management decision in terminating Ms. Laube but whether the claimant's discharge was disqualifying under the provisions of the Employment Security Law. While the decision to terminate the claimant may have been a sound decision from a management viewpoint, the evidence in the record does not establish misconduct sufficient to warrant the denial of unemployment insurance benefits. The claimant was reasonable in her belief that she was soon to be separated from employment and the evidence does not establish that any statements made by the claimant were designed to be unprofessional or cause disharmony or dissension. Benefits were allowed, provided the claimant meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated April 20, 2011, reference 01, is affirmed. The claimant is discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs