

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGELA K SOTELO
Claimant

APPEAL NO. 07A-UI-03742-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WASHINGTON COUNTY HOSPITAL
Employer

OC: 03/18/07 R: 03
Claimant: Appellant (1-R)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Angela Sotelo (claimant) appealed a representative's April 4, 2007 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Washington County Hospital (employer) for wanton carelessness in performing her work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 1, 2007. The claimant participated personally. The employer participated by Alice Floss, Laboratory Manager. The claimant offered one exhibit, which was marked for identification as Exhibit A. Exhibit A was received into evidence. The employer offered one exhibit which was marked for identification as Exhibit One. Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on July 29, 2005, as a part-time phlebotomist. The claimant withdrew blood, labeled the samples, and sent it to the lab fifteen to twenty times per day. She was diagnosed with anxiety, depression, and sleep deprivation in October 2006. The claimant was treated by her physician, who prescribed medication. The claimant was absent at least one day per month. She never provided any documentation to her employer regarding her diagnosis.

The employer issued the claimant a verbal warning on October 10, 2006, for withdrawing blood above an intravenous site. On November 3, 2006, the employer issued the claimant a verbal warning for going to break without notice to others and failing to perform a time sensitive withdrawal. On January 9, 2007, the employer issued the claimant a written warning for failure to recognize that a surgical sample was unlabeled, performing a test on a patient that was outside the claimant's expertise, and failure to label a blood sample. The employer warned the claimant that further infractions could result in her termination from employment. The employer issued the claimant verbal warnings regarding personal telephone calls at work. At the

claimant's evaluation on July 18, 2006, the employer discussed the claimant's need to improve her collections, billing, computer skills, and therapeutic phlebotomy. The claimant did not indicate during any of the warnings that her poor performance could be due to her medical condition.

On March 16, 2007, the claimant was supposed to draw blood from an out patient. The claimant did not label the sample. The sample had to be discarded and the patient had to return to the facility for testing. The employer terminated the claimant on March 16, 2007. The claimant left before the employer could finish with the termination. The claimant did not indicate that her failure to label the sample was due to any medical condition. The claimant has never received any documentation from a medical professional indicating that her condition affected her work duties.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was 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). An employer has a right to expect employees to perform their job according to the employer's instructions. The claimant disregarded

the employer's right by repeatedly failing to follow the employer's instructions. The claimant's disregard of the employer's interests is misconduct. The claimant defends her actions by stating she was not able to work due to her condition. The claimant's failure to advise the employer of her condition and that she knew it was affecting her work is also misconduct. As such she is not eligible to receive unemployment insurance benefits.

The issue of the claimant's availability for work is remanded for determination.

DECISION:

The representative's April 4, 2007 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because she was discharged from work for misconduct. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The issue of the claimant's availability for work is remanded for determination.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw