

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONNA R WILLIAMSON
Claimant

APPEAL NO. 09A-UI-09892-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

**Original Claim: 02/24/08
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Donna R. Williamson (claimant) appealed a representative's February 11, 2009 decision (reference 08) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Care Initiatives (employer). After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on August 6, 2009. This appeal was consolidated for hearing with one related appeal, 09A-UI-09893-DT. The claimant participated in the hearing. Lynn Corbeil of TALX UC eXpress, formerly known as Johnson & Associates, appeared on the employer's behalf and presented testimony from two witnesses, Jalissa Simmons and Heather Reed. During the hearing, Exhibit A-1 and Employer's Exhibits One, Two, and Three were entered 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.

ISSUES:

Was the claimant's appeal timely or are there legal grounds under which it can be treated as timely?

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The representative's decision was mailed to the claimant's last known address of record on February 11, 2009. The claimant denied receiving the decision. She further asserted that she did not become aware of the decision until July 2 because she had stopped filing weekly claims for unemployment insurance benefits after a few weeks and did not realize there was a lock on her claim; after expiration of her old claim year, she established a second claim year effective February 22, 2009 and began receiving benefits without incident. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by February 21, 2009. The appeal was not filed until July 9, 2009, which is after the date noticed on the disqualification decision.

After a prior period of employment with the employer, the claimant most recently started working for the employer on May 9, 2008. She worked full-time as a licensed practical nurse (LPN)/charge nurse at the employer's Eldora, Iowa, long-term care nursing facility. Her last day of work was

December 30, 2008. The employer suspended her on that date and discharged her on January 2, 2009. The stated reason for the discharge was falsification of information on her application.

The claimant had reapplied for employment with the employer on April 21, 2008. The application form instructed her to "list below your work experience, starting with your present or last place of employment." The claimant listed first some PRN (*Pro re nata* – commonly used in medicine to mean "as needed") employment with Lutheran Social Services she had worked from May 2002 to present. She next listed her prior employment with the employer from July 2006 until February 2007. She omitted a period of employment with another long-term care nursing facility from June 2007 through January 2008. The form as signed by the claimant indicated that "information given in this Application is true and complete to the best of my knowledge. Should I be employed by this company, any omission of relevant data, misrepresentation, or false statement contained herein may be considered cause for immediate dismissal."

As a result of some issues arising from the employment with the other long-term care nursing facility ending January 2008, the Iowa Board of Nursing did an investigation of a complaint. On December 29, 2008, the claimant received a letter of inquiry from the Nursing Board regarding the investigation, which she shared with the employer. At that time, the employer became aware of the other employment.

The employer's hiring practice was to contact several of the most recent employers of applicants. As the claimant listed her prior employment with the employer as her second-most recent employment, the employer did not realize there was an intervening employer. Therefore, the employer was deprived of the opportunity to contact the other facility. Had the employer had that opportunity, the other facility might have shared with the employer the concerns that led to the complaint with the Nursing Board. At the least, had the claimant disclosed the employment, the employer could have inquired of the claimant regarding the ending of the employment with that employer. Either way, had the employer known there had been some concerns relating to the claimant's performance that resulted in her termination with the prior employer, the employer then would not have hired the claimant, at least not without some further inquiry or investigation of its own on the allegations of the complaint.

The Nursing Board complaint was not resolved until after the employer discharged the claimant. The resolution was through a settlement agreement in which the claimant was charged with unethical conduct on performance issues, primarily regarding proper dispensation of medications.

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); Iowa Code § 96.5-2-a.

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).

A false statement on an employment application must endanger the health, safety, or morals of the applicant or others or result in exposing the employer to legal liabilities or penalties or result in placing the employer in jeopardy. Since the claimant would be dealing with the health of residents in the employer's facility, there is jeopardy to the employer if there was a potential problem with the claimant's proper performance of her duties. The Iowa court has ruled that a misrepresentation on a job application must be materially related to job performance to disqualify a claimant from receiving unemployment insurance benefits. Larson v. Employment Appeal Board, 474 N.W.2d 570 (Iowa 1991).

Although the court did not define materiality, it cited Independent School District v. Hanson, 412 N.W.2d 320 (Minn. App. 1987), which stated that a misrepresentation is not material if a truthful answer would not have prevented the person from being hired. Here, the employer would not have outright hired the claimant had she properly disclosed the prior employment, at least not without further inquiry. The claimant's prior employment with the omitted long-term care nursing facility was clearly relevant to the employer's consideration of her reemployment with its facility; she knew or should have known that the employer's hiring decision could be affected if they were aware of the prior employment and the circumstances of the ending of that employment. Therefore, the administrative law judge concludes that the claimant's act of falsification on her application was misconduct and, as a consequence, she is disqualified for unemployment insurance benefits. The claimant's omission of the relevant information from her application shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's February 11, 2009 decision (reference 08) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of December 30, 2008. This disqualification continues until the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw