

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBRA L BENFER
Claimant

APPEAL NO. 09A-UI-10155-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA
Employer

**Original Claim: 06/14/09
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The University of Iowa (employer) appealed a representative's July 13, 2009 decision (reference 01) that concluded Debra L. Benfer (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 31, 2009. The claimant participated in the hearing and was represented by Nate Willums, attorney at law. David Bergeon appeared on the employer's behalf and presented testimony from three witnesses, Lu Wilford, Twila Martin, and Donna Muller. During the hearing, Claimant's Exhibit B was 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.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on June 11, 1990. She worked full-time as a staff respiratory therapist on a rotating schedule. Her last day of work was June 10, 2009. The employer placed her on administrative leave pending investigation at that time and discharged her on June 15, 2009. The reason asserted for the discharge was charting that she had given a treatment to two patients that she had not.

The claimant had received a warning in 2002 for documenting in a patient's chart that she had given a treatment when she had not. At that time, the charting was done manually, on paper. Around the first of February 2009, the employer went to a new computer charting software program. The claimant encountered some difficulties adjusting to the new process, as did others.

On June 8 the claimant was working a 12-hour shift and was responsible for about eight patients, three or four of whom had cystic fibrosis. Those patients would be scheduled to have chest physiotherapy, which could be manual or could be percussion. The claimant charged that

she had given the therapy to two of the patients, but in fact she had not. When confronted, she acknowledged that she had not given the therapy to those patients, but indicated she made a mistake when charting as to which of the patients she had given the therapy, as under the new process she did the charting for all the patients together at the end of the day.

The claimant had been given a warning with a one-day suspension on April 1, 2009 for an error or omission for a medication administration being left off instead of on. On April 22, 2009, she was given a suspension for having a follow-up conversation with a coworker who had complained to the employer about a problem with how the claimant had done some work. Because of these prior issues, together with the charting error on June 8, the employer discharged the claimant.

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). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

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).

The reason cited by the employer for discharging the claimant is her charting errors on June 8 following the other disciplinary actions. Under the circumstances of this case, the claimant's errors on June 8 were the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, or were due to a good-faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's July 13, 2009 decision (reference 01) is affirmed. The employer did discharge the claimant, but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw