

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHERYL ROGAN
Claimant

APPEAL NO: 10A-UI-17014-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERCY MEDICAL CENTER
Employer

OC: 11/14/10
Claimant: Appellant (1)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Cheryl Rogan (claimant) appealed an unemployment insurance decision dated December 9, 2010, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Mercy Medical Center (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 25, 2011. The claimant participated in the hearing with daughter Sam Rogan. The employer participated through Glenna O'Connor, Employment Specialist; Barb Keogh, Director of the Department; and Melissa Klinkkammer, Patient Care Coordinator for Home Care. 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.

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 employed as a full-time registered nurse from January 23, 1991 through November 11, 2010. She was discharged for falsification of a patient record, unauthorized use of a lab order, practicing outside the scope of her nursing license and providing inaccurate and conflicting information during an investigation. On November 8, 2010 Patient Care Coordinator Melissa Klinkkammer returned a call to Mr. Walters, who was the CFO at the Women's Wellness Center, regarding a concern about invalid lab requests initiated by the claimant. Mr. Walters subsequently spoke with Barb Keogh, Department Director on November 9, 2010 and stated that he did not want to get anyone in trouble but thought it was important. There were two lab requests ordered by the claimant for her daughter Samantha Rogan, without a physician's order.

The claimant's daughter's friend drew blood from the daughter and the blood vial was submitted with a prepared Mercy Home Care lab slip requesting a pregnancy test. It was an unusual blood test so the lab technician questioned it. The specific date this occurred is unknown but it

was apparently a few days before November 5, 2010. The lab slip listed a Dr. T. Bowers as the ordering physician so the lab tech contacted Finley Hospital to speak with the physician about the order. The tech was told that Dr. Bowers was an emergency room physician but had not worked there for years and was no longer practicing. The lab tech advised the lab director who contacted the claimant since the lab request said to contact Cheryl. The director told the claimant there was no Dr. Bowers and asked who ordered the blood test. The claimant claimed it was ordered by the Women's Wellness Center (WWC) and when the director again asked for the name of the ordering physician, the claimant reported it was Nicole Schlosser, ARNP.

The director could not reach Ms. Schlosser but asked the on-call doctor at WWC who denied the test. Ms. Schlosser subsequently called the director and stated that she did not order the blood test. In fact, Ms. Schlosser never spoke with the claimant but the claimant did speak with Ms. Schlosser's nurse, Alison. Ms. Schlosser told Alison to tell the claimant that she would not order the blood test on her daughter as it was not necessary. She further told Alison to tell the claimant that since the daughter was 18, Ms. Schlosser could order a urine test but only after seeing the claimant's daughter. Alison conveyed this information and directed the claimant to call the WWC but the claimant never returned the call. It was only after the fact that Ms. Schlosser learned that a blood vial had been presented to the lab with the request.

On November 5, 2010 the lab director again called Ms. Schlosser to ask if she had requested a urine test on Samantha Rogan and again Ms. Schlosser said no. The director reported that the claimant had brought in a urine specimen and a lab slip from Mercy Home Care for her daughter. The lab slip requested a pregnancy test and listed the WWC as the ordering physician. The second lab slip also requested results to be reported to the claimant at Mercy Home Care. Before contacting Ms. Schlosser, the director asked the claimant who at the WWC ordered the urine test and the claimant had again reported it was Ms. Schlosser.

The lab director met with the employer and provided the lab slips. Both lab slips were from Mercy Home Care for Samantha Rogan, who is not and has not been a patient there. Additionally, both lab slips requested the results be provided to the claimant which is against protocol. Lab results are never reported directly to the nurse but are reported back to the ordering physician to ensure appropriate treatment for the patient. Additionally, the claimant had filled out her daughter's insurance information on the lab slips so the tests could be processed for payment, which the employer found to be additional falsification since no physician had ordered the tests.

The employer met with the claimant on November 10, 2010 to question her about the lab slips. The claimant initially said it was her writing that listed Dr. Bower's name and she was questioned why she would have listed a physician who was not currently practicing. She was unable to provide an answer. The claimant later claimed to the employer and testified during the hearing that her daughter wrote Dr. Bower's name on the slip and that Dr. Bower was her neighbor. The claimant did not think it was wrong to use a Mercy lab form and claimed that Ms. Schlosser's nurse had given a verbal order to do the tests. The claimant simply could not provide a proper explanation which might have exonerated her from unlawfully ordering medical tests. The employer suspended the claimant and discharged her on the following day. The incident was subsequently reported to the Iowa Board of Nursing.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. 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.

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 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 was discharged on November 11, 2010 for falsification of a patient record, unauthorized use of a lab order, practicing outside the scope of her nursing license and providing inaccurate and conflicting information during an investigation. The claimant provided extensive explanations for her actions but those explanations were not credible. The preponderance of the evidence confirms the claimant was essentially practicing medicine without a license. The claimant's actions show 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. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated December 9, 2010, 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 been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs