

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CAROL J KONRADI
Claimant

APPEAL NO. 11A-UI-02180-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HERITAGE OF IOWA FALLS INC
Employer

OC: 10/24/10
Claimant: Appellant (2)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated February 16, 2011, reference 01, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on March 21, 2011. Claimant participated personally. The employer participated by Mr. John Henson, Hearing Representative, and witnesses Ms. Diane Klein, Personnel Manager and Ms. Mikeal Loneman, Interim Administrator. Employer's Exhibits One through Six were received into evidence.

ISSUE:

The issue is whether the claimant was discharged for 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: Carol Konradi was employed by Heritage of Iowa Falls, Inc. from September 30, 1974 until October 8, 2010 when she was discharged from employment. Ms. Konradi held the position of full-time director of nursing and was paid by salary. Her immediate supervisor was the interim administrator, Ms. Mikeal Loneman.

Ms. Konradi was discharged after the facility's acting administrator received complaints from an assistant director of nursing about a repetitive problem with a lack of supplies, and because of the assistant director's belief that team issues were not being adequately supported by the claimant.

Ms. Konradi had received a written warning on March 18, 2010 when the actions of one or more nurses under her supervision had resulted in injury to a resident and a complaint. Ms. Konradi was instructed at that time to perform audits and disciplinary actions promptly and to act on grievances in a timely manner. The claimant was also generally warned to follow the organization's "quality care" and the organization's "value of excellence" expectations in performing her duties as the director of nursing. After the March warning that had been given

by the previous administrator, the acting administrator met in a group settings to issue directives or reminders. Ms. Loneman personally visited with Ms. Konradi on occasion to discuss day-by-day work issues.

After the complaint had been received about Ms. Konradi from the assistant director of nursing, Ms. Loneman investigated further and concluded that Ms. Konradi was not acting to the level of proficiency that the organization desired in her position as director of nursing. Ms. Loneman noted that a doctor's order for an x-ray of a resident that had been issued on Monday had not been completed until Thursday and felt that Ms. Konradi was ultimately responsible as the nurses that had been given the directive were under Ms. Konradi's supervision. The daily report sheet of that resident however did not show that the resident was to receive an x-ray. When informed of supply shortages, Ms. Konradi would immediately order them and the claimant routinely reviewed supplies that needed to be ordered on a more regular basis. After reviewing the matter, Ms. Loneman believed that the claimant had not made sufficient progress in meeting the generalized expectations of the warning level that had been given to the claimant by the previous administrator and a decision was made to terminate Ms. Konradi from her employment.

Ms. Konradi believed that she was generally performing the duties that were incident to her job and believed that she was adhering to the general instructions that were given in in-service meetings to all management personnel. Ms. Konradi did not consider the conversations between herself and the acting administrator to be in the form of warnings. Claimant believed that she had made satisfactory progress in the areas noted by the employer in the March 2010 warning.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes sufficient, intentional misconduct 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).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as the evidence in the record does not establish that Ms. Konradi had received any additional counseling sufficient to adequately warn her that her job was in jeopardy following the warning that was issued to her in March 2010. The claimant believed that her performance was satisfactory. Ms. Konradi was not specifically warned about areas of job dissatisfaction or deficiencies. The employer elected to issue generalized caveats to all administrative personnel during in-service meetings rather than to specifically warn or counsel Ms. Konradi that her performance needed further improvement to meet the employer's expectations. During the hearing in this matter Ms. Konradi denied that she had intentionally violated company rules and supplied satisfactory explanations to the employer's allegations she was not performing her job duties.

The question before the administrative law judge is not whether the employer has a right to discharge Ms. Konradi for these reasons but whether the discharge is 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, intentional misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits at the time of discharge has not been shown. Benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated February 16, 2011, reference 01, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs