IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

BRIGITTE O BRUS
Claimant

GOOD SAMARITAN SOCIETY INC
Employer

APPEAL NO: 10A-UI-02631-D

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/03/10
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Good Samaritan Society, Inc. (employer) appealed a representative's February 8, 2010 decision (reference 02) that concluded Brigitte O. Brus (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, an in-person hearing was held on April 27, 2010. The claimant participated in the hearing and presented testimony from one other witness, Marilyn Corey. Lori Welch appeared on the employer's behalf and presented testimony from three other witnesses, Layne Gross, Joyce Dougherty, and Dana Williams. During the hearing, 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.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on June 30, 2009. She worked full time as director and nurse in the employer's home health agency operation. Her last day of work was January 5, 2010. The employer discharged her on that date. The reason asserted for the discharge was falsification of records.

The first specific incident of issue was a physical therapy assessment of a client that was done on September 1 where the employer concluded the claimant had falsely indicated a predated authorization from the client's physician. At the time, this client was the service's only client. Ms. Dougherty, the state operations manager over the home care service, had frequently visited and reviewed the employer's operation and records since September 1; she could provide no viable explanation as to why she had not noticed any discrepancy in the record until she was re-reviewing records on January 5, 2010 when she was investigating another issue. Given the passage of time, the claimant no longer had a clear recollection as to what might have been the situation regarding the timing on getting the doctor's signature in relation to the physical therapist's assessment.

The second specific incident of issue is regarding a client visit scheduled for December 24, 2009. Ms. Williams, a staff nurse who also worked at the employer's long-term care nursing facility but who began working about three days per week for the home health agency in about October 2009, had been scheduled to see the client. As it was Christmas Eve, the claimant offered to take the client visit for Ms. Williams. The claimant completed a visit form, which showed a signature from the client. When Ms. Williams returned to the client's home the following week, the client indicated in conversation that she had not had a nurse visit on Christmas Eve. In examining the issue on or about January 5 after Ms. Williams reported her concern to Ms. Dougherty, the employer determined that the client's signature as shown on the form submitted by the claimant for December 24 did not appear similar to the client's signature on other forms, such as the one for the visit on December 30. Therefore, the employer concluded that the claimant had falsified the signature and had not made the visit as claimed. There was some evidence provided indicating that the client did have some memory issues and was likely not to remember a visit from someone she rarely dealt with, and that her signatures did vary.

A third issue also discovered when Ms. Dougherty was reviewing records on January 5 was a concern regarding a request for a treatment change order that the claimant marked as being faxed to the doctor on December 31 but which form indicated it had not been printed until January 3. The administrative law judge notes that the form which shows it was printed on January 3 and on which the claimant noted she had faxed a request on December 31 also indicates that the form was a copy. The claimant indicates that the form dated January 3 was a replacement for one that was initially sent on December 31 but which was lost.

The final specific issue and the issue which triggered the employer's review of the claimant's paperwork handling had to do with a new client intake assessment the claimant was supposed to do with Ms. Williams on January 2, a Saturday. The claimant had some personal activities she was doing that day, and there was miscommunication between the claimant and Ms. Williams when they were going to meet with the client. This would have been the first time Ms. Williams would have been the person primarily responsible for doing the full intake assessment, and the claimant was to be with her to assist her particularly with the computer aspects. Ms. Williams proceeded to the client's home, and believing that the claimant would not be coming at all, did the assessment without the computer portion. The claimant went to the client's home later and learned that Ms. Williams had already been there; the claimant then learned that Ms. Williams had gone to work a shift at the long-term care nursing facility, so could not return to go over and make any supplements to the assessment with the claimant.

On January 3 the claimant began inputting information regarding the client's assessment into the computer in preparation for submission of the formal Medicare assessment; she made various calls to Ms. Williams to obtain information. The formal Medicare assessment must be completed by a person who actually did an assessment. The employer concluded that the claimant was about to submit a Medicare assessment for a client she had not personally assessed. The claimant had not submitted a Medicare assessment; her intention had been to complete the form on the computer as much as possible but to then revisit the client on January 5 and personally do an assessment before the Medicare submission was made, but she was discharged before she could do this. The claimant, who has had many years of experience in dealing with Medicare assessments and compliance, is certain that she was within the timeframe allowed by Medicare; Ms. Dougherty, who is also experienced and familiar with Medicare provisions, is equally certain that the claimant's suggested approach would not be allowable.

Because of these issues and concerns, 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 which 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 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. 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 the concern regarding, generally, falsification of records. Conduct asserted to be disqualifying misconduct must be both specific and current. Greene v. Employment Appeal Board, 426 N.W.2d 659 (Iowa App. 1988); West v. Employment Appeal Board, 489 N.W.2d 731 (Iowa 1992); 871 IAC 24.32(8). The issue regarding the timing of the August/September physical therapy assessment and physician's order is nowhere near current so as to serve as a basis to conclude a January 5 discharge was for misconduct.

As to the other concerns, the one that is the most troubling to the administrative law judge is the allegation that the claimant falsified the report of the visit to a client on December 24. This is a fairly close call, but given the potential for mistaken recollection on the part of the client and the lack of anything other than a lay comparison of the signatures, the administrative law judge concludes that the employer established that the claimant in fact did not make the visit and did falsify the report by a preponderance of the evidence. Cosper, supra.

As to the fax of the request for the change order, at worst it does not appear that if the claimant did not submit the request until January 3 as compared to December 31 that there was any potential for ill effect such as if she had actually falsified an approval. More importantly, as the form indicates it is a copy, there is no clear evidence that the claimant's signature noting that the

original request had been faxed on December 31 was in fact false. As to the potential Medicare assessment submission, the administrative law judge first notes that there was no submission, so there was no falsification. Obviously it would have been best if the claimant had been at the assessment examination with Ms. Williams on January 2, but her failure to be available at that time was not the reason she was discharged. As to whether the claimant would have been deemed falsification under the Medicare provisions had she proceeded with her plan to revisit the client, do a personal confirmatory appraisal, and then submit the assessment is a moot issue as it did not happen; further, it appears that there is a genuine or good faith difference of opinion as to the application of the Medicare provisions to the approach planned by the claimant.

In sum, 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 February 8, 2010 decision (reference 02) 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.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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