IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MEGHAN K PARSONS Claimant	**APPEAL NO: 12A-UI-07038-D**
	ADMINISTRATIVE LAW JUDGE DECISION
IOWA ORTHOPAEDIC CENTER PC Employer	
	OC: 05/20/12 **Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Meghan K. Parsons (claimant) appealed a representative's June 6, 2012 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with Iowa Orthopaedic Center, P.C. (employer). After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held on July 18, 2012. The claimant participated in the hearing. Renee Pipe appeared on the employer's behalf and presented testimony from one other witness, Julie Pringle. During the hearing, Employer's Exhibits One through Four 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?

OUTCOME:

Reversed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on March 29, 2010. She worked full-time as a front desk receptionist. Her last day of work was May 17, 2012. The employer discharged her on that date. The reason asserted for the discharge was poor customer service and patient complaints.

The claimant had been given a number of warnings and coachings regarding some attitude issues, primarily regarding interactions with coworkers, as well as attendance issues. As a result of these concerns, the claimant was given a final warning on December 14, 2011 containing a 90-day probationary period. While there was some general concern regarding generic "customer service," the bulk of the concerns regarding communications dealt with coworkers.

On May 17 two patients reported concerns regarding the claimant. One reported that when the patient asked for directions, the claimant simply pointed and said, "just go that way," and seemed to be too busy to fully address the patient, and that she lacked eye contact and a positive tone of voice. The other reported that she felt the claimant did not acknowledge her. When questioned, the claimant did not believe she had been overtly rude to any patients, but she conceded that she had been a bit "off her game" that day because she had suffered a car problem before getting to work and was dealing with some financial issues to deal with the car problem.

Because of the patient complaints after having been given the warning on December 14, the employer determined to discharge 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 gravity of the incident and the number of prior violations or prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

The reason cited by the employer for discharging the claimant is the patient complaints on May 17, 2012 after the warning for other issues in December 2011. Under the circumstances of this case, the claimant's lack of ideal patient interaction on May 17 was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was 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 June 6, 2012 decision (reference 01) is reversed. 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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