

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMY JONES
Claimant

APPEAL NO. 06A-UI-08391-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

TRINITY REGIONAL MEDICAL CENTER
Employer

**OC: 07-09-06 R: 01
Claimant: Appellant (2)**

Section 96 5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 3, 2006, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 30, 2006. The claimant participated in the hearing with Tammy Morain, Neighbor, and Rebecca Bygness, Office Clerk, and was represented by Attorney Aaron Fultz. Ted Vaughn, Human Resources Manager; Maggie Hanrahan, Radiology Technician; Linda Whaley, Senior Staff; Maureene Nordstrom, Clinical Radiology Supervisor; and Roseanne Murray, Radiology Manager, participated in the hearing on behalf of the employer with Attorney Stuart Cochrane. Claimant's Exhibit A and Employer's Exhibits One through Three, Five through Eleven, and Fourteen through Sixteen were admitted into evidence.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the claimant's last-known address of record on August 3, 2006. The claimant did not receive the decision. She had been told during the fact-finding interview that a decision would be issued within seven to ten days. She called the Department on the ninth day and was told to wait until the tenth business day. She went to the local office on August 21, 2006, and was told a decision denying benefits had been issued at which time she filed an appeal. Because the claimant did not receive the decision in the mail and followed the instructions given by the Department, the administrative law judge concludes the appeal is timely.

The claimant was employed as a full-time diagnostic radiology technician for Trinity Regional Medical Center from February 7, 2000 to July 13, 2006. On July 7, 2006, the claimant and employee Rebecca Bygness went to a local motocross race in Eagle Grove. While there they had two or three beers. During a race Ms. Bygness' nephew crashed and the claimant and Ms. Bygness went to assist him. The claimant held his head so he could not move it. The

victim's wife approached and dropped a cup of beer on the ground which spilled on the claimant. When the Eagle Grove paramedics arrived they directed everyone to move away except for the claimant because she was holding the victim's head. They then asked the claimant and Ms. Bygness to help them roll the victim on to a backboard. The claimant and Ms. Bygness followed the ambulance in the claimant's car and on the way the claimant called the radiology department and said they had a patient coming in and she would be available to help if they needed it. Ms. Bygness called the hospital and told them they may need to call a trauma. When they arrived at the hospital the claimant asked Robin Wooster, the on-site EMT, if Radiology Technician Maggie Hanrahan needed help and Ms. Wooster said yes and used her badge to let the claimant into the treatment area. The claimant then asked Ms. Hanrahan if she needed help and Ms. Hanrahan said the situation was under control. Two radiology technicians were conducting examinations of the patient and the claimant "grabbed the film" and ran it to the area where it was read. She never viewed the results of the films. She then went to the restroom and when she came out one of the radiology technicians said they had to repeat some of the films. Ms. Hanrahan had returned to the reading area and told the claimant she should not be there. She also noted she could smell alcohol on the claimant's breath. After Ms. Hanrahan told her to leave the claimant went to the waiting area and did not return to the patient care area. On July 10, 2006, Senior Staff Linda Whaley and Clinical Radiology Supervisor Maureene Nordstrom were notified of the situation and suspended the claimant and Ms. Bygness for three days pending an investigation. On July 13, 2006, Ms. Whaley, Ms. Nordstrom and Radiology Manager Roseanne Murray met with the claimant and notified her that her employment was terminated because she misrepresented her employment status because the employer maintained the claimant told other employees she had been called in to work on the case. Ms. Bygness was suspended and is still employed by the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code section 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). The claimant was at the races and had two to three beers in a two hour time period before the accident. The victim's wife then spilled beer on the claimant when she was trying to assist him. While the claimant smelled of alcohol, the evidence does not establish that she was intoxicated. Both the claimant and Ms. Bygness credibly testified that neither of them interfered with the Eagle Grove paramedics and that the paramedics in fact enlisted them to help secure the victim on the backboard. The employer contends the claimant called the hospital at least twice and told them to call a trauma but the evidence, in the form of Ms. Bygness' testimony, clearly shows that it was she, rather than the claimant, that asked for a trauma call. While Ms. Wooster's written statement indicates the claimant asked to be let in because she had called ahead and told Ms. Hanrahan she was coming in to help her out, the claimant's first-hand testimony regarding that situation was that she asked Ms. Wooster if Ms. Hanrahan needed help and Ms. Wooster said yes before letting her in. When there are conflicting statements made about an incident, the administrative law judge must give more weight to the first-person testimony if it is credible. The claimant's testimony regarding that issue was credible and Ms. Wooster was not available to be questioned about her statement. There is no evidence the claimant represented herself as being on-call at the time of the incident. The claimant admits that she ran film to the reader area but denies looking at the results of the film and she did leave when told to do so by Ms. Hanrahan. The employer has not demonstrated that the claimant was intoxicated, interfered in a negative manner with patient care or failed to leave when directed to do so. Consequently, the administrative law judge concludes the claimant's actions were an isolated incident of poor judgment and there was no intent to cause harm to the patient or employer. Therefore, benefits must be allowed.

DECISION:

The August 3, 2006, reference 02, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/cs