

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONNA L COX
Claimant

APPEAL NO: 14A-UI-03466-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PACIFICA HEALTH SERVICES LLC
Employer

OC: 03/02/14

Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Donna L. Cox (claimant)) appealed a representative's March 26, 2014 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with Pacifica Health Services (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 22, 2014. The claimant participated in the hearing. Kim Miles appeared on the employer's behalf and presented testimony from one other witness, JoAnn Mundt. 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 June 12, 2013. She worked full time as a licensed practical nurse (LPN) in the employer's skilled nursing facility. Her last day of work was a shift from 6:00 p.m. on February 24 to 6:30 a.m. on February 25, 2014. The employer discharged her later on February 25. The reason asserted for the discharge was a failure to complete duties.

The claimant usually worked three days per week on a 6:00 a.m. to 6:30 p.m. shift, but she had been covering extra shifts during the overnights. On February 24, prior to the start of the 6:00 p.m. shift, the employer gave the claimant a warning for failure to complete a med pass on an extra shift the claimant had covered on the overnight of February 23. The warning had advised her that additional issues of this nature could result in discharge.

During the claimant's shift on the overnight of February 24, the claimant had physically performed a skin assessment on a resident but had failed to complete the paperwork to document the skin assessment by the end of the shift; the employer considers that if the documentation is not done, there was no assessment. Also, the claimant failed to do the narcotics count with the on-coming nurse at the end of the shift. The claimant had been extremely occupied during the overnight shift particularly with a resident who had been very ill, necessitating about seven bed linen changes during the shift. The claimant stayed on past the normal end of her shift, and by the time she was clear enough to do the narcotics count, the on-coming nurse had gone to another unit to perform her duties, so the claimant did the count having an on-coming medications aide standing by to observe. However, since in both respects the claimant technically again did not complete her duties, 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 her repeated failure to complete her duties. Under the circumstances of this case, the claimant's failures were at worst the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and were good faith errors in judgment or discretion. The mere fact that an employee might have various incidents of unsatisfactory job performance does not establish the necessary element of intent; misconduct connotes volition. A failure in job performance is not misconduct unless it is intentional. *Huntoon*, supra; *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). There is no evidence the claimant intentionally failed to properly failed to perform her duties, particularly on her last shift, to the best of her abilities. 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 March 26, 2014 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.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css