IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

DANIELLE M GUTHERY
Claimant

GREAT RIVER MEDICAL CENTER
Employer

APPEAL NO. 12A-UI-02711-NT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/29/12
Claimant: Appellant (2)

871 IAC 24.26(21) – Compelled Resignation
Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated March 7, 2012, reference 01, which denied unemployment insurance benefits. After due notice was issued, a telephone hearing was held on April 3, 2012. The claimant participated. Participating on behalf of the claimant was Toby J. Gordon, attorney at law. Participating as witness was Lynn Taylor, former supervisor. Although duly notified, the employer did not respond to the notice of hearing and did not participate.

ISSUE:

At issue is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Danielle Guthery was employed by Great River Medical Center from May 12, 2003, until January 27, 2012. Ms. Guthery worked as a full-time LPN and was paid by the hour. Her immediate supervisor was Sara Emmett.

On January 27, 2012, the claimant was given the option of resigning or being discharged. The employer alleged that Ms. Guthery had acted inappropriately by waking up a resident earlier than the resident needed to be awoken, that the claimant had made inappropriate statements to residents, and that the claimant had "kicked a wheelchair" of a resident. Although Ms. Guthery denied the allegations, she nonetheless was forced to resign in lieu of being discharged.

Prior to being terminated, the claimant had not been warned or counseled during the approximate eight and one-half years that she had been employed by the medical center.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. 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 App. 1992). Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence expose deficiencies in that party's case. See Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976).

871 IAC 24.26(21) provides:

> Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:
>
> (21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

In this case, the claimant had not been warned or counseled by her employer and specifically denied the allegations made by her employer on January 27, 2012. The claimant nonetheless was given the option of resigning or being discharged and elected to resign only to protect her employment history. The claimant denies any and all wrongdoing related to this matter.

The administrative law judge concludes, based upon the hearing record, that the employer has failed to meet its burden of proof to establish disqualifying misconduct. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's decision dated March 7, 2012, 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.

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Terence P. Nice
Administrative Law Judge

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Decision Dated and Mailed

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