IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

RYAN M BRANNEN
Claimant

TRINITY REGIONAL MEDICAL CENTER
Employer

APPEAL NO: 10A-UI-17557-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 11/28/10
Claimant: Respondent (1)

Section 96.5-2-a – Discharge
Section 96.7-2-a(2) – Charges Against Employer's Account

STATEMENT OF THE CASE:

Trinity Regional Medical Center (employer) appealed a representative's December 22, 2010 decision (reference 01) that concluded Ryan M. Brannen (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, a telephone hearing was held on February 4, 2011. The claimant participated in the hearing. Ted Vaughn appeared on the employer's behalf and presented testimony from one other witness, Jen Corell. 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.

ISSUES:

Was the claimant discharged for work-connected misconduct? Is the employer's account subject to charge?

FINDINGS OF FACT:

The claimant started working for the employer on September 18, 2010. He worked part time (about 24 hours per week) as a registered nurse. His last day of work was November 22, 2010. The employer discharged him on that date. The reason asserted for the discharge was inappropriate conduct outside of the workplace.

The claimant's birthday was October 25. He worked a 12-hour shift that day, then went to a coworker's home for a birthday party. At some point in the evening, he and some coworkers were discussing various procedures and equipment for making intravenous (IV) connections. He was an EMT for another jurisdiction, and so had an EMS kit in his car; he went out to his car and brought in the EMS kit to show the coworkers the kind of equipment that kit contained for an IV hook up.

Later on that night, the claimant had become pretty intoxicated when some of his coworkers thought it would be amusing to give the claimant an IV connection of saline. He was too

inebriated to object, and the coworkers used the supplies the claimant had brought in with his EMS kit to hook him up.

Later that week, gossip about the party and the IV hookup got around to a charge nurse, who reported it to Ms. Corell, the critical care nurse manager on about November 1; she reported it to Mr. Vaughn, the human resources manager, on about November 5. The employer began making inquiries, and on about November 10 the claimant approached Mr. Vaughn to discuss the matter, as he had heard the employer had questions. After the discussion, Mr. Vaughn indicated that the employer would continue to look into the matter, but did not indicate that there was potential discipline.

Around November 22 the employer learned that the nursing licensing board would consider the conduct to be "reportable" conduct. The employer then determined to report the incident to the board, and to discharge the claimant, at least in part because he was still in his probationary period. The employer has general rules against "unethical conduct," but does not have policies specifically indicating what types of off-duty conduct could result in disciplinary action.

The claimant established an unemployment insurance benefit year effective November 28, 2010.

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 inappropriate conduct outside of the workplace which occurred with the non-medically ordered administration of the

saline IV on October 25. Under the definition of misconduct for purposes of unemployment benefit disqualification, the conduct in question must be "work connected." Diggs v. Employment Appeal Board, 478 N.W.2d 432 (Iowa App. 1991). However, the court has concluded that some off-duty conduct can have the requisite element of work connection. Kleidosty v. Employment Appeal Board, 482 N.W.2d 416, 418 (Iowa 1992). Under similar definitions of misconduct, it has been found:

> In order for an employer to show that is employee's off-duty activities rise to the level of misconduct in connection with the employment, the employer must show by a preponderance of the evidence:
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> > [T]hat the employee's conduct (1) had some nexus with her work; (2) resulted in some harm to the employer's interest, and (3) was in fact conduct which was (a) violative of some code of behavior impliedly contracted between employer and employee, and (b) done with intent or knowledge that the employer's interest would suffer.

Dray v. Director, 930 S.W.2d 390 (Ark. App 1996); In re Kotrba, 418 N.W.2d 313 (SD 1988), quoting Nelson v. Department of Employment Security, 655 P.2d 242 (WA 1982); 76 Am. Jur. 2d, Unemployment Compensation §§ 77–78. Here, there is only a slim nexus between the misuse of the EMS equipment to the claimant's work with the employer, there is no showing of any harm to the employer's interests, and there was not a violation of some code between the employer and the claimant which clearly applying to such conduct. Further, the claimant did not have an intent to cause harm to the employer's interests; it was not the claimant who administered the IV, and at the time he lacked the capacity to exercise the judgment which might have caused him to resist the administration.

Further, there is no current act of misconduct as required to establish work-connected misconduct. 871 IAC 24.32(8); Greene v. Employment Appeal Board, 426 N.W.2d 659 (Iowa App. 1988). The incident in question occurred almost a month prior to the employer's discharge of the claimant. It appears the triggering reason for the discharge at that time was learning that the licensing board considered the event to be "reportable," but this is not a change in circumstances or facts which would excuse the failure to take disciplinary action more promptly. Finally, a discharge solely due to a failure to satisfactorily complete a trial or probationary period of employment does not constitute misconduct, and does not in and of itself relieve the employer's account from charge. 871 IAC 24.32(5). 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.

The final issue is whether the employer's account is subject to charge. An employer's account is only chargeable if the employer is a base period employer. Iowa Code § 96.7. The base period is "the period beginning with the first day of the five completed calendar quarters immediately preceding the first day of an individual's benefit year and ending with the last day of the next to the last completed calendar quarter immediately preceding the date on which the individual filed a valid claim." Iowa Code § 96.19-3. The claimant's base period began July 1, 2009 and ended June 30, 2010. The employer did not employ the claimant during this time, and therefore the employer is not currently a base period employer and its account is not currently chargeable for benefits paid to the claimant.

DECISION:

The representative's December 22, 2010 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible. The employer's account is not subject to charge in the current benefit year.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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