

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHANNON M ALMENDINGER
Claimant

APPEAL NO. 11A-UI-15425-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LINN COMMUNITY CARE
Employer

OC: 10/30/11
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Shannon M. Almendinger filed a timely appeal from an unemployment insurance decision dated November 21, 2011, reference 01, that disqualified her for benefits. After due notice was issued, a telephone hearing was held December 30, 2011 with Ms. Almendinger participating. Executive Director Tim Olson and Director of Nursing Services Natalie Haller participated for the employer, Linn Community Care.

ISSUE:

Was the claimant discharged for misconduct in connection with the employment?

FINDINGS OF FACT:

Shannon M. Almendinger worked as a lab technician for Linn Community Care from December 24, 2007 until she was discharged November 1, 2011. The final incident leading to discharge occurred on October 31, 2011. Ms. Almendinger was responsible for leaving a box of samples in a particular location for a referral lab to pick up. She did not do so. Ms. Almendinger had received a verbal warning on October 24, 2011 for failing to freeze a blood sample taken from a patient. Because of this, it was necessary to draw the sample a second time. There had been other counselings and group warnings during 2011. While these had been documented in Ms. Almendinger's personnel file, she had received no written warnings.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with the employment. This is a close case, but the administrative law judge concludes that it does.

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.

While misconduct is most often found in deliberate actions contrary to the employer's interests, it may also be found in repeated acts of carelessness or negligence. The claimant acknowledged that the oversight on October 31, 2011 occurred. She agreed that the failure to freeze the blood sample on October 24, 2011 was serious. While she denied that the verbal warning on October 24 contained a specific reference to discharge, the administrative law judge concludes that the warning was sufficient to put her on notice that her job may be in jeopardy. In this context, her careless omission on October 31, 2011 was an act of misconduct, not an isolated error. Two acts of carelessness in the space of one week is sufficient to establish misconduct. Benefits are withheld.

DECISION:

The unemployment insurance decision dated November 21, 2011, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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