

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HAU P DO

Claimant

APPEAL NO: 12A-UI-04549-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CENTRAL IOWA HOSPITAL CORP

Employer

OC: 03/18/12

Claimant: Appellant (2)

Section 96.5-2-a – Discharge

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

STATEMENT OF THE CASE:

Hau P. Do (claimant) appealed a representative's April 16, 2012 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Central Iowa Hospital Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 14, 2012. The claimant participated in the hearing. Amanda Brooks appeared on the employer's behalf and presented testimony from one witness, Dan Frost. 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?

OUTCOME:

Reversed. Benefits allowed. Employer's account exempt from charge in current benefit year.

FINDINGS OF FACT:

The claimant started working for the employer on November 9, 2011. He worked full time in housekeeping on a 7:30 a.m. to 4:00 p.m. schedule. He normally worked Monday through Friday, but did work alternating weekends in which case he had two weekdays off. His last day of work was March 22, 2012. The employer discharged him on that date. The reason asserted for the discharge was failing to immediately turn in a phone he had found.

On March 20, at about 1:00 p.m. the claimant found a phone near a restroom he was cleaning. He put it in a pocket and intended on turning it in before he left that day, but forgot. He found it when he returned home, and intended to return it to work the next day he worked, which was not scheduled to be until March 23. On March 21 the employer realized that the claimant must have found the phone and called him at home, leaving a message at about 1:00 p.m. asking

him to come in. When the claimant received the message, he assumed the employer had something of an emergency need for assistance, and so quickly left to come into work without retrieving and bringing the phone. When he arrived at about 2:00 p.m., he was asked about the phone, which he immediately acknowledged that he had found. Because he had not turned it in when he left for the day on March 20 and did not bring it with him the next time he came into work after being called on March 21, the employer determined that the claimant must be discharged for inappropriately taking property.

The claimant established an unemployment insurance benefit year effective March 18, 2012.

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 belief that the claimant had intentionally taken and failed to return the phone that he had found. Misconduct connotes volition. *Huntoon*, supra. There is no evidence the claimant intentionally failed to turn in the phone before leaving on March 20 or intentionally failed to bring it back with him in his haste to report to work on March 21. Under the circumstances of this case, the claimant's failure was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. 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 October 1, 2010 and ended September 30, 2011. 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 April 16, 2012 decision (reference 02) is reversed. 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.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs