

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NORA E FINNEY
Claimant

APPEAL NO: 14A-UI-07370-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TRINITY REGIONAL MEDICAL CENTER
Employer

OC: 06/15/14
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Trinity Regional Medical Center (employer) appealed a representative's July 10, 2014 decision (reference 01) that concluded Nora E. Finney (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 August 18, 2014. The claimant participated in the hearing. Ted Vaughn appeared on the employer's behalf and presented testimony from one other witness, Garry Gillis. One other witness, Tim Wooster, was available on behalf of the employer but did not testify. 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:

Affirmed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on April 4, 1978. Since the end of October 2013 she worked full time as an environmental services technician. Her last day of work was June 6, 2014. The employer discharged her on that date. The reason asserted for the discharge was performance issues and falsification of a document.

The employer had been attempting to bring the claimant's job performance into an acceptable range for many months. She had been given a documented verbal warning in February 2014, a suspension in March 2014, and another suspension in April 2014.

On May 8 the claimant had been assigned to work in a particular department and had been given a daily route sheet upon which she was to check off tasks when done. In two rooms she checked off on the sheet that the tasks in the rooms were done, where in one room she only

emptied the trash, and in the other room she did not do the high dusting. In the room she only emptied the trash she had asked the occupant what needed to be done and was told nothing was needed but the trash; in the room she did not do the high dusting she asserted that she had not been trained that the dusting was needed in that room. The employer, through her immediate supervisor, Gillis, was aware on that date of the problems in the two rooms and the claimant's indication on the sheet that the rooms had been finished. However, the employer did not address the issue with her at that time. Again on May 12 there was an issue where the claimant had not put out the "wet floor" sign after mopping a floor. However, the employer also did not address the issue with her at that time. The first the employer discussed these issues with the claimant was on May 29. After that discussion, the employer determined to discharge her and did so on June 6.

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. Rule 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. Rule 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. Rule 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 continued job performance issues on May 8 and May 12 after prior warnings. However, there is no current act of misconduct as required to establish work-connected misconduct. Rule 871 IAC 24.32(8); *Greene v. Employment Appeal Board*, 426 N.W.2d 659 (Iowa App. 1988). The most recent incident in question occurred over two weeks prior to the employer meeting with the claimant on

May 29 to advise her that it was inquiring into the issue and was considering discharging her because of the incidents. 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 July 10, 2014 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 she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs