

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEEANN HOGG

Claimant

APPEAL NO: 11A-UI-00787-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOOD SAMARITAN SOCIETY INC

Employer

OC: 08/15/10

Claimant: Respondent (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Good Samaritan Society, Inc. (employer) appealed a representative's January 10, 2011 decision (reference 02) that concluded LeeAnn Hogg (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 24, 2011. The claimant participated in the hearing. Gail Dierk appeared on the employer's behalf. One other witness, Darla Vaug, was available on behalf of the employer but did not testify. On March 3, 2011 the administrative law judge issued an order regarding the potential of taking administrative/official notice of a public record, a "Stipulation and Order" issued by the Iowa Board of Nursing regarding the claimant under a case 08-540; the record was left open through March 14 for either party to object to the administrative law judge taking notice of that Board's action. Neither party has made any objection to the administrative law judge taking notice of that Board's action; administrative/official notice is hereby taken of that determination. 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?

FINDINGS OF FACT:

The claimant started working for the employer on September 7, 2010. She worked part time as a registered nurse at the employer's long-term care and skilled nursing facility. Her last day of work was November 3, 2010. The employer discharged her on November 4, 2010. The stated reason for the discharge was failing to have a valid nursing license, and failing to get her license reinstated by the time promised.

The claimant asserted to the employer upon her hire that she was licensed to practice as a registered nurse, a requirement for her job, and was so employed. On October 11, a representative of the Iowa Board of Nursing informed the employer that the claimant did not have a valid license, that it had been suspended in January due to a failure to supplement her

continuing education report and make payment of a fine. When Ms. Dierk, the director of nursing, confronted the claimant on or about that same day, the claimant indicated surprise, claiming that she had no knowledge of her license having been suspended. She assured Ms. Dierk that she would contact the Board and fix the situation immediately, that the matter should be resolved within a week. Ms. Dierk initially accepted this explanation, and allowed the claimant to continue working as a nursing assistant on a fill-in basis pending resolution of the licensing issue. When the licensing issue had not been corrected by November 4, the employer discharged the claimant for failing to have a valid license as claimed and failure to promptly procure reinstatement as promised.

The Board of Nursing entered into a Stipulation and Order with the claimant regarding her license in case 08-540; the claimant signed the Stipulation and Order on July 14, 2009, and the Board approved the order on September 16, 2009. Paragraphs One and Three of the Stipulation and Order specified that the claimant would be required to submit evidence of 36 hours of continuing education within 90 days of the issuance of the Order, and verification she had taken a specific course within 30 days of the issuance of the Order. Paragraph Two of the Stipulation and Order indicates that the claimant also was required to pay a fine of \$1,000.00 within 12 months of the issuance of the Order. Paragraph Four of the Order indicates:

Respondent [the claimant] consents to a suspension of licensure privileges upon failure to fulfill the provisions of paragraphs 1, 2, and 3 . . . The suspension shall not require additional action by this Board. Satisfaction of the conditions set forth in the above paragraphs will immediately relieve the suspension and return Respondent's license to its appropriate status.

As of her employment with the employer September 7, 2010, the claimant had not complied with either the continuing education reporting requirement or the requirement that she pay the fine. At the hearing, the claimant indicated that she did subsequently successfully satisfy those requirements and that her license had been reinstated as of November 8, after her separation from the employment.

The claimant established a claim for unemployment insurance benefits effective August 15, 2010. She reopened the claim by filing an additional claim effective December 19, 2010. The claimant has received no unemployment insurance benefits since the separation from employment.

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); Iowa Code § 96.5-2-a.

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 claimant was discharged for failing to have a valid license as claimed with hired, and failure to promptly resolve the issue as promised. The claimant asserted at the hearing that she had not been aware that the Nursing Board had suspended her license. The administrative law judge finds this assertion by the claimant to not be credible. The claimant had signed the Stipulation and Order on July 14, 2009 in which she promised to make the necessary reports and pay the indicated fine with a specified time, with notice that failure to do so would result in automatic suspension. At the time she applied for the job with the employer and asserted she had a valid nursing license, she knew or should have known that her statement was false. This false statement also would endanger the health, safety or morals of the applicant or others or result in exposing the employer to legal liabilities or penalties and place the employer in jeopardy, by allowing an unlicensed person to act as a registered nurse. The misrepresentation was materially related to the claimant's job performance; she would not have been hired for the position had she properly reported her license status. Larson v. Employment Appeal Board, 474 N.W.2d 570 (Iowa 1991). Independent School District v. Hanson, 412 N.W.2d 320 (Minn. App. 1987). Therefore, the administrative law judge concludes that the claimant's false claim of holding a valid license at the time of hire shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's January 10, 2011 decision (reference 02) is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of November 4, 2010. This disqualification continues until the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs