

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHIRLEY BOOMGARDEN
Claimant

APPEAL NO: 14A-UI-03017-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

**HUMBOLDT COUNTY
MEMORIAL HOSPITAL**
Employer

**OC: 02/23/14
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 12, 2014, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 10, 2014. The claimant participated in the hearing with Attorney Monty Fischer. Mary Moritz, Human Resources Director and Jim Atty, CEO, participated in the hearing on behalf of the employer and were represented by Attorney Emily Reiners. Employer's Exhibit One and Claimant's Exhibits A, B and C were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time ward clerk/CNA for Humboldt County Memorial Hospital from May 15, 2002 to February 21, 2014. She was discharged for letting her RN license lapse and not discovering it for nine months.

The claimant received her registered nursing license in 1983 but let it become inactive because she was working in a different industry in Colorado. When she went to work for the employer she returned as a ward clerk because she did not want to "jump right back into nursing." She worked as a ward clerk for the employer for 11 years before regaining her RN license December 23, 2010. She began working for the employer as a RN in October 2011. Her license was in effect until March 23, 2013, at which time it was supposed to be renewed. In order to renew the license, the claimant was required to attend continuing education classes. She had done so and as of December 2013 had approximately 50 hours of continuing education. She needed 30 hours every three years to renew her license.

On December 5, 2013, after having a dream about her license, the claimant checked the state website and found her license listed as inactive because her license expired March 23, 2013.

She miscalculated as she had last been licensed December 23, 2010, but did not start working as an RN for the employer until October 2011. After realizing her license had expired she immediately went to the hospital and reported the situation to DON Julie Carlson. Ms. Carlson indicated she would look into the situation and call the claimant. After researching the issue and talking to the employer Ms. Carlson notified the claimant she could not work as a RN. The employer then offered the claimant a position as a ward clerk and CNA until the situation was resolved and the claimant accepted the position, believing it was on a temporary basis. The claimant submitted all required information to the board of nursing December 7, 2013. Her license was reactivated December 12, 2013.

The claimant called Ms. Carlson frequently over the next few weeks but she did not know the outcome of the employer's review of the matter. At the beginning of January 2014 the claimant called a member of the hospital board to ask if the board member knew what the employer planned to do and then received a phone call from Human Resources Director Mary Moritz and Ms. Carlson asking why she spoke to a board member. The claimant explained she did so because there had not been any communication with her regarding what action, if any, the employer planned to take about the situation. The claimant was very upset and the employer told her she was not going to lose her job.

On February 19, 2014, the employer called the claimant and asked her to meet with it February 21, 2014. The claimant reported for the meeting and her employment was terminated because she worked as a RN for nine months after her license lapsed. The claimant had not received any previous verbal or written warnings.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The claimant's nursing license expired March 23, 2013. She was not aware it expired until December 5, 2013, and immediately reported the situation to the employer. The claimant had taken more than the number of required continuing education classes and was able to secure her license within one week of learning it had not been active since March 23, 2013. The claimant testified she did not know her license expired in March 2013 and her testimony was credible. Additionally, the employer acknowledged its belief that the claimant was unaware her license had expired. There is no evidence that the claimant's actions were intentional or anything other than a mistaken belief that her license did not expire until March 23, 2014.

Additionally, even if it was determined the claimant's actions constitute disqualifying job misconduct this situation cannot be considered a current act of misconduct. The employer became aware the claimant unknowingly worked without her nursing license for approximately nine months December 5, 2013. While it did not and could not allow her to work as a RN, the employer did not take disciplinary action against the claimant until it terminated her employment February 21, 2014. The employer stated it discharged the claimant because she violated policy by not maintaining a current nursing license but then testified it was waiting to learn of all possible ramifications against the hospital for the claimant working without her license, although at the time of termination it still did not know what the consequences and fall out would be. It also indicated the claimant was asking to return to her RN position when she was discharged. While the administrative law judge recognizes that some time is required for investigation, waiting two and one-half months to terminate the claimant's employment moves the action away from the realm of current act of misconduct. The employer knew December 5, 2013, the claimant had been working without a license and that was a violation of its policy. That was the ultimate reason it cited for her termination and it did not need to know all of the financial liability it might face as a result of her inactive license to make the decision to end her employment.

Under these circumstances, the administrative law judge concludes the employer has not met its burden of proving disqualifying job misconduct as that term is defined by Iowa law. It has not

demonstrated any intentional misconduct on the part of the claimant or that her actions were a current act of misconduct. Therefore, benefits are allowed.

DECISION:

The March 12, 2014, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css