

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CINDY M WALTON
Claimant

APPEAL NO: 10A-UI-10512-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MONROE COUNTY PROFESSIONAL MGMT
Employer

OC: 06/27/10

Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Cindy M. Walton (claimant) appealed a representative's July 22, 2010 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with Monroe County Professional Management (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 10, 2010. The claimant participated in the hearing and was represented by Richard Schmidt, Attorney at Law. Judy Ahn appeared on the employer's behalf. 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 December 12, 2007. She worked full time as a direct service provider in a residential setting in the employer's program for persons with mental and physical challenges. Her last day of work was June 28, 2010. The employer discharged her on that date. The reason asserted for the discharge was failure to report potential abuse by a coworker.

The claimant's position required that she report suspected abuse against clients/residents. In approximately April, a coworker made a comment to the claimant about being tired cleaning up a client/resident's vomit and made a comment about forcing the client/resident to eat it. The claimant did not report this statement, as she was familiar with the coworker and did not believe that the comment was intended literally, but was simply a venting or expression of frustration. She had been instructed in training that while she was required to report "suspected abuse," that meant that she was to report the conduct if she "reasonably believed" that there had in fact been abuse. As she did not believe the coworker's statement was true, she did not believe she needed to report the comment.

Another employee did report the statement in about May; it was subsequently determined by about mid-June that the coworker had not in fact done anything improper with the client/resident. On June 16 the employer learned that the claimant had witnessed the statement by the coworker but had not reported it. The employer did not take action to discharge the claimant for failing to make report of the coworker's statement until June 28.

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 her failing to report the statement by the coworker as "suspected abuse." The employer has not established that the claimant's training did not define that as being where she "reasonably believed" that abuse may have occurred. Under the circumstances of this case, the claimant's failure to report the coworker's statement 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. Further, there would be no current act of misconduct as required to establish work-connected misconduct. 871 IAC 24.32(8); Greene v. Employment Appeal Board, 426 N.W.2d 659 (Iowa App. 1988). The employer knew of the claimant's omission 12 days prior to the discharge.

Based upon the evidence provided, the employer has not met its burden to show disqualifying misconduct. Cosper, supra. Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's July 22, 2010 decision (reference 01) is reversed. 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/css