

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MEGAN M SMITH

Claimant

APPEAL NO. 09A-UI-11706-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IA DEPT OF HUMAN SVCS/WOODWARD

Employer

Original Claim: 07/05/09

Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Megan M. Smith (claimant) appealed a representative's August 7, 2009 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with the Iowa Department of Human Services/Woodard (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 31, 2009. The claimant participated in the hearing. David Williams of TALX Employer Services appeared on the employer's behalf and presented testimony from one witness, Diane Stout. During the hearing, Employer's Exhibit One was entered into evidence. 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 March 7, 2005. She worked full-time as a residential treatment worker in the employer's ICFMR (intermediate care facility for mentally retarded). Her last day of actual work was May 6, 2009. The employer suspended her with pay as of that date and discharged her on June 30, 2009. The reason asserted for the discharge failure to pass a record check evaluation under Iowa Code § 218.13.

On February 21, 2009, the claimant had been responsible for passing medications. During her shift, she observed one of the adult residents under her care seemed unusually lethargic. Concerned that she might have made an error in passing the medications, the claimant self-reported the potential problem. It was never determined whether the resident was or was not given or failed to be given medication in error. The claimant admitted to failing to pay proper attention to her dispensing procedure so that she could have verified what, if any, medication was given to the resident. It was later determined that the resident was lethargic at least in part due to having the flu. On March 16, the employer gave the claimant a written reprimand for

failing to pay proper attention to her dispensing duties. There had not been any prior warnings issued to the claimant. The claimant believed the matter was resolved.

In late April, the claimant learned that there was some further inquiry underway; as a result, she was placed on paid suspension on May 6. The outcome of the further inquiry was that an internal record check evaluation was run with an unfavorable result; as a consequence, she could no longer work at the facility. There was no further information provided as to the underlying substance of what additional facts, if anything, led to the negative record check result other than the February 21 medication incident. Because of receiving the unfavorable record check evaluation indicating that the claimant was no longer eligible for employment, the employer discharged the claimant.

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 that 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 that 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 was the unfavorable record check evaluation under Iowa Code § 218.13, which concluded that the claimant was no longer eligible for employment. Where a loss of a criteria for employment results in loss of an individual's employment, the discharge is not for disqualifying misconduct unless there is a showing that the individual both knew that her job was in jeopardy and that she subsequently and intentionally committed infractions that led to the loss of her employability. Fairfield Toyota, Inc. v. Bruegge, 449 N.W.2d 395 (Iowa App. 1989). No willful and substantial misconduct has been proven in this case. Even if the claimant was negligent in her medication dispensation on February 21, the rules and the case law indicate that a single act of negligence is insufficient to demonstrate "repeated negligence of such a degree of recurrence" that it equals willful

misconduct in culpability. Here, the employer's own review of the incident resulted only in a written reprimand on March 16.

The employer asserts that the loss of employability due to an unfavorable record check evaluation under Iowa Code § 218.13 is comparable to the loss of a driver's license by an employee required to have a driver's license for the employee's job. Assuming the parallel is apt, even the loss of a driver's license by someone required to have a driver's license does not per se result in a disqualification from unemployment insurance benefits; but, rather, again volition and a deliberate act of misconduct must be found. Cook v. Iowa Department of Job Service, 299 N.W.2d 698 (Iowa 1980), Fairfield Toyota, supra; Huntoon, supra. Although the administrative law judge can sympathize with the employer's situation insofar as being required to follow the statutory directives to not allow the claimant to continue her employment while yet not having any further information beyond what it had when it issued the reprimand to the claimant, the employer has not provided any evidence the claimant is guilty of intentional acts leading to the loss of her employability.

Further, there is 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 incident in question occurred several months prior to the employer's suspension of the claimant. The unfavorable record check evaluation, which subsequently resulted from the same February 21 incident, does not create a new "act" of potential misconduct. While the employer had a good business reason for discharging the claimant, it 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 August 7, 2009 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/kjw