

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TARI L LAING
Claimant

APPEAL NO: 14A-UI-05513-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TIPTON CHIROPRACTIC & HEALTH CTR
Employer

OC: 04/27/14
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Tipton Chiropractic & Health Center (employer) appealed a representative's May 19, 2014 (reference 01) decision that concluded Tari L. Laing (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known address of record, a telephone hearing was held on June 18, 2014. The claimant participated in the hearing. Steven Ballard, Attorney at Law, appeared on the employer's behalf and presented testimony from two witnesses, Dr. Darlene Ehlers and Kim Schott. *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?

OUTCOME:

Affirmed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on December 17, 2008. She worked part time as a chiropractic assistant and technician as well as front desk person. Her last day of work was April 24, 2014. The employer suspended her on April 27 and discharged her on May 1, 2014. The reason asserted for the discharge was failing to properly perform duties.

The employer had concerns regarding the claimant's abilities for some time; in September 2013 the employer had reduced the claimant's hours to about 24 hours per week due to concerns about the claimant's skills and the need to ensure she was supervised. She had been given a documented verbal warning regarding some performance issues in May 2011, and had also been given a verbal warning in May 2012 for some HIPAA related concerns. She had not been given any warnings advising her that her job was in jeopardy.

On April 24 the claimant was responsible for spinning some samples in a centrifuge and then combining the serum into one tube to be sent off for testing. On April 27 the employer discovered that the claimant had spun the samples, but had left the tubes in the centrifuge and failed to get the serum ready and sent for testing. As a result, the employer suspended the claimant. On or about April 29 the employer learned from another employee, Schott, that something similar had happened in about mid-February where the claimant had left for lunch without taking samples out of the centrifuge and preparing the tube of serum to be picked up for testing; in that instance Schott had taken care of finishing the work on the sample so that it could be taken to the laboratory. Because of these concerns, the employer determined to discharge 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 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 failure to properly perform her duties regarding the sample preparation. Misconduct connotes volition. A failure in job performance is not misconduct unless it is intentional. *Huntoon*, supra. There is no evidence the claimant intentionally failed to work to the best of her abilities. The mere fact that an employee might have various incidents of unsatisfactory job performance does not establish the necessary element of intent. *Huntoon*, supra; *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The claimant had not previously been warned that future issues could result in termination. *Higgins v. IDJS*, 350 N.W.2d 187 (Iowa 1984). 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 May 19, 2014 (reference 01) decision 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

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