

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SARA L ROVINE
Claimant

APPEAL NO. 07A-UI-03225-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCED PAIN CONTROL CENTER PC
Employer

**OC: 04/23/06 R: 04
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated March 21, 2007, reference 02, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on April 16, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Ronny Kafiluddi participated in the hearing on behalf of the employer with witnesses, Shirley Kafiluddi, Kathy Watt, and Debra Schutte.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked part time for the employer as a medical assistant-receptionist from August 1, 2006, to February 9, 2007. Her immediate supervisors were Shirley Kafiluddi, the office manager, and Kathy Watt, the office nurse. Ronny Kafiluddi, M.D. is the owner of the clinic.

On February 9, 2007, Shirley Kafiluddi informed the claimant that her services were no longer needed because she did not fit and did not do things the way they wanted her to.

The employer discharged the claimant for the following reasons. Sometime in October 2006, the employer had a problem with the computer system shutting down. There is a computer next to a sink in the exam room, and the back of the computer faced the sink. Dr. Kafiluddi determined that the claimant had accidentally splashed water on the computer while washing her hands, which caused the computer problem. There was also an instance where the scanner broke down because the claimant did not remove a paperclip before scanning a document.

The employer discovered situations where the claimant misfiled scanned test results into the wrong electronic patient record. One time in October 2006 the claimant deleted an electronic patient record.

On December 21, 2006, the claimant called the pharmacy to request that a prescription be refilled. The prescription was for 325 milligram dosage of Tylenol. The pharmacist told the claimant that it did not routinely stock 325 milligram doses and asked if 500 milligram Tylenol could be substituted. Dr. Kafiluddi was out of the office that day. The claimant okayed the 500 milligram dosage without approval from any medical professional. Sometime later, the employer discovered this violation of office procedure.

On January 9, 2007, the claimant prepared a note for Dr. Kafiluddi requesting he prepare a prescription. The claimant mistakenly wrote that the prescription was for a 10 milligram dosage instead of the correct 5 milligram dosage. When the Dr. Kafiluddi read the note, he noticed the discrepancy and corrected the claimant's error. He talked to the claimant at that time about the seriousness of making medication errors.

On January 12, 2007, the claimant called in a refill of a patient's prescription. The chart would indicate that a refill could be given, but the claimant neglected to get the doctor's approval before calling in the refill, which violated clinic policy. Dr. Kafiluddi noticed the unapproved refill when he reviewed the charts for the day.

There is no evidence of any additional incidents of alleged misconduct after January 12, 2007, but Dr. Kafiluddi reviewed the claimant's work performance in February and decided on February 9, 2007, that due primarily to the medication violations, the claimant's employment needed to be terminated.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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 to prove the claimant was discharged for a current act of work-connected misconduct as defined by the unemployment insurance law. 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).

While the employer may have been justified in discharging the claimant, no current act of work-connected misconduct as defined by the unemployment insurance law has been proven. If the employer would have discharged the claimant after the January 12, 2007, refill violation, it would have established a current act of willful misconduct because the claimant must have known that any refill required specific approval from the doctor. The employer, however, was immediately aware of the refill violation but did not discharge the claimant until almost a month later. The employer presented no testimony about any additional misconduct committed by the claimant after January 12, 2007. Therefore, the claimant was not discharged for any current act of work-connected misconduct.

Additionally, the other conduct presented by the employer as grounds for the discharge was not willful misconduct; it was negligent conduct that would not rise to the level of work-connected misconduct in culpability. This conduct also would not qualify as current acts of misconduct, which the law requires for disqualifying a claimant from receiving benefits.

DECISION:

The unemployment insurance decision dated March 21, 2007, reference 02, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs