

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALLYSON R WARREN
Claimant

APPEAL NO. 12A-UI-06036-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

INTRUST
Employer

OC: 04/15/12
Claimant: Respondent (5-R)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Intrust filed a timely appeal from a representative's decision dated May 16, 2012, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a hearing was held on June 18, 2012. Claimant participated. The employer participated by Danielle Burkhalter, Human Resource Partner. Claimant's Exhibits One, Two and Three were received into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Allyson Warren began employment with the captioned employer d/b/a Iowa Health Home Care on January 26, 2011. Ms. Warren was employed as a full-time Home Care Assistant II and was paid by the hour.

On March 22, 2012, the claimant was informed by voicemail from the company's official scheduler that her last assignment with the company would conclude on March 25, 2012. Subsequently, Ms. Warren spoke with a company representative and it was determined that the claimant's employment with Iowa Health Home Care would come to an end on April 15, 2012 when staff would be permanently laid off. Ms. Warren made arrangements to have PTO hours paid to her through the effective date of her layoff on April 15, 2012.

Intrust was in the process of ending its employment of home health care assistants and would end the employment of home health care assistants effective April 15, 2012. The claimant and other home health care assistants were told of the possibility of making application for the same or similar employment with "True Care" a company that would be taking over Intrust's previous patient census. Applicants for employment with True Care would be required to undergo a

background test and drug screening. The hiring of applicants was at the discretion of the True Care company.

REASONING AND CONCLUSIONS OF LAW:

The first question before the administrative law judge is whether the claimant quit employment or was discharged by the employer. The administrative law judge finds the claimant's employment came to an end when Intrust d/b/a Iowa Health Home Care permanently laid off the claimant effective April 15, 2012 and no further work was available to her with Intrust because they were ceasing operations in the home health care assisted field.

The next question then is whether the evidence in the record establishes that the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In the case at hand the evidence clearly establishes that the claimant was not discharged for misconduct in connection with her work but was discharged from employment when the employer made a business decision to cease operations in the home health care assistant field. The evidence establishes the claimant was told that her employment with the company would be ending effective April 15, 2012 and that the claimant remained employed until her employment came to an end on that date by action of the employer. Claimant's separation at that time took place under non disqualifying conditions. The claimant had engaged in no job-related misconduct and the separation took place only because the employer had decided to cease doing business in that part of the health care field. The administrative law judge concludes that the claimant's separation from employment thus took place for no disqualifying reason.

The issue of whether the claimant may have refused an offer of suitable work is remanded to the UIS Division for investigation and the issuance of an appealable determination.

DECISION:

The representative's decision dated May 16, 2012, reference 01, is affirmed as modified. It is held that the claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law. The issue of whether the claimant refused an offer of suitable work is remanded to the UIS Division for investigation and the issuance of an appealable determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs