IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

AMY L TAYLOR
Claimant

HEALTHY CONNECTIONS INC
Employer

APPEAL NO. 11A-UI-05145-H2

ADMINISTRATIVE LAW JUDGE DECISION

OC: 10-31-10
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 6, 2011, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on June 21, 2011 in Creston, Iowa. The claimant did participate along with her witnesses Carly L. Hoffman (Fry) and was represented by Bruce H. Stolze, Jr. Attorney at Law. The employer did participate through Sara Watkins, supervising nurse, Rachel Owens, assistant director and was represented by Matthew J. Hemphill, Attorney at Law. Employer's Exhibits A and B were entered and received into the record. Claimant's Exhibit One was entered and received into the record.

ISSUE:

Was the claimant discharged due to job related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a LPN part-time beginning November 18, 2010 through March 17, 2011 when she was discharged.

The claimant was trained to work primarily with client D, a seven-year-old boy who attended school most days. The claimant normally worked four twelve-hour shifts per week. She was trained on how to care for D, by her coworker Carly L. Hoffman (Fry). The claimant picked up additional work hours when Ms. Fry returned to school. The claimant was then responsible for training another new nurse to fill in when she was not available. She was training Tonya Towne who subsequently complained to the employer about training information given to her by the claimant. Ms. Towne reported that the claimant told her to fill out the medication administration record (MAR) at the beginning of the work shift. Filling out medical records prior to events occurring is against the employer's policy and is against regularly accepted nursing practices. Ms. Towne also reported that the claimant had told her she was not to report to D's Mother when D had changes in his lung sounds because it upset her. It was imperative for D's Mother to know about changes in lung sounds in order to seek medical care for D. The claimant was trained by Ms. Fry who denied telling her that it was acceptable to chart ahead or that it was acceptable to withhold information from D's Mother.

The employer presented the claimant with a written warning detailing that she was not to chart ahead nor was she to withhold any information from D's Mother. The claimant refused to sign the write up because she did not believe she had charted ahead nor did she believe that she had withheld any information from D's Mother. When the claimant refused to sign the written warning, she was discharged.

The claimant denied that she ever charted ahead or that she ever instructed any employee to withhold information from a parent. The claimant's witness, Ms. Fry confirmed the claimant's version of events. The employer could not produce any documentation to show that the claimant had charted ahead or that she had withheld medical information from D's parent.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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 establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, 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 misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation.

The employer has not established that the claimant was charting ahead or that she was withholding information from D's parent. Inasmuch as employer had not previously warned claimant about any of the issues leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Benefits are allowed.

DECISION:

The April 6, 2011 (reference 02) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

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Teresa K. Hillary
Administrative Law Judge

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Decision Dated and Mailed

tkh/pjs