

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DIANE DEBOER
Claimant

APPEAL NO. 12A-UI-14642-W

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAVERLY HEALTH CENTER
Employer

**OC: 11/11/12
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a fact-finding decision dated December 10, 2012, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on January 25, 2013. Claimant participated through attorney, Joseph G. Martin. Employer participated by attorney, Thomas C. Verhulst. Also present for the employer was H.R. Director Angie Tye. Jan Thedens, Lab Manager, Doug Karsjens, Lead Tech, David Doucette, Lab Tech and Abby Miller, Employee Relations Specialist were also present for the employer as witnesses or potential witnesses. Employer Exhibits 1 through 15 were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds:

Claimant, Diane DeBoer was employed by Waverly Health Center as a Medical Technologist. She was discharged on November 15, 2012 by employer for allegedly improperly documenting test results on November 11, 2012.

Part of the claimant's job as a medical technologist involved performing various quality control testing. The claimant worked the overnight shift. Specifically, the overnight shift was responsible for testing the reagents used at the facility for quality. The claimant worked the overnight shift on November 10, 2012. Her shift ended on November 11, 2012 at 6 a.m.

On November 11, a lab tech, David Doucette, discovered the reagents in the centrifuge and the incubator. He believed they were from the claimant's shift and he further believed they had not been tested. Nevertheless, the documentation from the claimant for that date showed that the testing had been completed. He and the other lab techs reported this immediately to the Lab Manager and an investigation was commenced.

During the investigation, the claimant stated she had been called away and that her shift had been very busy. At hearing, the claimant maintained that she had completed the testing and disposed of the reagents in accordance with policy. Following the investigation, claimant was terminated on November 15, 2012 for falsification of documentation.

REASONING AND CONCLUSIONS OF 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.

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.

871 IAC 24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate

the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning falsification of documentation. Claimant was warned concerning this policy.

The greater weight of evidence established that the claimant documented that she had completed the testing before she actually completed it. While the testimony is disputed, in all likelihood, the claimant got busy at her job and simply failed to complete the testing. She left the reagents to be tested both in the incubator and the centrifuge and forgot that she had not completed the task even though she had documented that she had already done so. The evidence which supports this includes the contemporaneous documentation of the investigation by the employer as well as the testimony and documentation of David Doucette.

The claimant denies this version of events. She does not, however, present a plausible alternative explanation. While the burden is clearly upon the employer, the employer has met this burden of proof by presenting the most plausible and logical explanation for the events which occurred.

While this was undoubtedly a mistake by the claimant, it was not an honest mistake. It was a mistake which arises to the level of misconduct as defined by Iowa law. The claimant pre-documented the completion of her work. She had been warned in the past not to engage in this conduct for the very reason of what ended up occurring. She pre-documented the validity of the reagents and then failed to complete the testing, thereby placing the employer, and more importantly the patients of the employer, in significant jeopardy. The claimant is the only safeguard to prevent this type of harm from occurring. It is the essence of the quality control portion of her job as a medical technologist. It is found she intentionally engaged in this unsafe practice which amounts to misconduct under Iowa law.

DECISION:

The fact-finding decision dated December 10, 2012, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Joseph L. Walsh
Administrative Law Judge

Decision Dated and Mailed

jlw/pjs