

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CYNTHIA H MILLER
Claimant

APPEAL NO. 09A-UI-07701-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERCY HOSPITAL
Employer

**Original Claim: 04/19/09
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Mercy Hospital (employer) appealed a representative's May 12, 2009 decision (reference 01) that concluded Cynthia H. Miller (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for non-disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 11, 2009. The claimant participated in the hearing. Carey Seger and Todd Beveridge appeared on the employer's behalf. 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:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on January 9, 2006. She worked as a full-time secretary. Her primary responsibility was scheduling appointments for patients. Beveridge supervised the claimant. The claimant understood that, according to the employer's progressive disciplinary policy, after an employee received a written warning and suspension, the next step would be termination.

The employer counseled the claimant on December 12, 2008 about her unsatisfactory job performance. On February 2, 2009, the claimant received a written warning for unsatisfactory job performance. On April 2, the employer suspended the claimant for failing to follow a provider's instructions about contacting the provider if the claimant talked to a specific patient. In mid-March, a provider asked the claimant to contact the provider if a particular patient called. When the patient did not call, the claimant took the time to call the patient. When the claimant talked to the patient, she forgot the provider wanted to talk to the patient and instead scheduled an appointment for the patient.

Sometime in mid-March, the Spanish interpreter received permission to take off April 3. The interpreter told the claimant about her day off and asked her not to schedule any

Spanish-speaking patients that day. A note was even put in the computer not to schedule Spanish-speaking patients on April 3. On March 30 or 31, the claimant noticed there were eight Spanish-speaking patients scheduled for appointments on April 3. The claimant only remembered one patient she had scheduled. The claimant scheduled this patient only after a doctor told her to use the language line that day and schedule the patient on April 3. The claimant printed off the schedule for April 3. The Spanish interpreter noticed the eight patients and made arrangements for another interpreter to work on April 3. No patients were rescheduled. The employer paid for the Spanish interpreter's time off and for another interpreter's six hours of work.

Beveridge learned about Spanish-speaking patients scheduled on April 3 on April 2 or 3. When he talked to the claimant on April 6, the claimant understood he was upset because the eight patients had been rescheduled. When Beveridge asked the claimant to write up a written explanation, she directed her comments to the fact no patients had been rescheduled.

Although the claimant is the primary person responsible for scheduling appointments, she does not schedule any Spanish-speaking patients without the assistance of an interpreter. Other people have access to the schedule on the computer. The claimant acknowledged she schedules most appointments.

On April 17, the employer discharged the claimant because she again demonstrated unsatisfactory job performance by failing to follow through with specific instructions by scheduling Spanish-speaking patients on a day she knew the interpreter would not be at work.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for 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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

Based on the employer's progressive disciplinary policy, the employer established compelling business reasons for discharging the claimant. Although the claimant scheduled almost all appointments, other employees had access to scheduling appointments. The claimant admitted she scheduled one Spanish-speaking patient on April 3 because a doctor told her to. The claimant denied she scheduled all eight appointments. Since there were only eight patients involved, the employer could have contacted these patients to ask who scheduled their

appointment on April 3, but did not. Instead, the employer concluded the claimant made all the appointments and intentionally disregarded the standard of behavior the employer had a right to expect from her. The employer's conclusions are not, however, supported by a preponderance of the credible evidence. If the evidence had supported this conclusion, the claimant would have been discharged for intentionally failing to follow directions, unless there was a justifiable reason for doing so. A justifiable reason would be a doctor telling her to schedule a Spanish-speaking patient on April 3.

The employer characterized the claimant's discharge as unsatisfactory work performance. Unsatisfactory work performance does not constitute work-connected misconduct. Even though the claimant had been written up for unsatisfactory work performance before, the problems addressed were all different. The employer no longer trusted the claimant to follow through on specific instructions. The facts establish the claimant made mistakes, but she did not commit work-connected misconduct. Therefore, as of April 19, 2009, the claimant is qualified to receive benefits.

DECISION:

The representative's May 12, 2009 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of April 19, 2009, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw