

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LORI SMITH

Claimant

APPEAL NO: 13A-UI-01311-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA

Employer

OC: 12/16/12

Claimant: Respondent (2)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

The University of Iowa (employer) appealed an unemployment insurance decision dated January 24, 2013, reference 01, which held that Lori Smith (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 5, 2013. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which she could be contacted, and therefore, did not participate. The employer participated through Mary Eggenburg, Benefits Specialist and Ellen Twinam, Human Resources Director. Employer's Exhibit One was admitted into evidence. 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:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time staff nurse from December 12, 2005 through November 8, 2012 when she was discharged for failing to provide safe patient care. She had received three previous written warnings and had been placed on a final warning before the employer received a patient complaint and a physician complaint about her. The claimant received her first written reprimand on December 20, 2011 for unscheduled absences, untimely charting in medical records, leaving patient care responsibilities and for parking her vehicle in the emergency room parking lot instead of in her assigned parking lot.

The second written reprimand was issued on May 23, 2012 for tardiness, unscheduled absences, leaving patient care responsibilities, failing to assist with taking patients and inappropriate use of the departmental camera. There was a child abuse situation and the child passed away. In situations like this, it becomes a criminal matter and the staff take no further action. The claimant took pictures of the child and then tried to erase the pictures from the

digital camera. She was aware of the employer's policy regarding criminal matters. The third and final reprimand was issued on June 5, 2012 for tardiness, leaving patient care responsibilities and for parking in an inappropriate parking lot.

The nurse manager conducted an investigation on November 6, 2012 regarding complaints about the claimant's patient care. The employer received a complaint from a patient who was treated by the claimant in the Emergency Department on October 1, 2012. The claimant told the patient, "If you don't start working with us here, we're going to poke you a lot and put catheters in you." The claimant was questioned about it and she stated that the patient came in unresponsive and she tried to communicate with the patient and tried to get the patient to work with the medical team. She admitted she explained to the patient if no information was provided, they were going to have to draw bloods for labs, even start an I-V and maybe catheters in order to determine what issues there were.

The second complaint was received from an emergency room physician regarding the claimant's inability to prioritize patient care and delays in patient care on October 18, 2012. The claimant took four patients from start to finish during her 12-hour shift and one patient had no documentation. The claimant worked on two patients, one who presented with stroke symptoms and the other patient was septic. The patient with stroke symptoms was sent for an MRI but the septic patient needed to be placed on an antibiotic infusion. The claimant did not start the antibiotic and the physician could not find her for 20 minutes. Finally, the physician had to have a co-worker administer the antibiotic. When the claimant was questioned as to where she went, she admitted she and a co-worker were discussing new monitors as opposed to providing patient care. The employer discharged her for a repeated failure to meet the needs of patients, as well as multiple policy violations.

The claimant filed a claim for unemployment insurance benefits effective December 16, 2012 but has not received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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 to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on November 8, 2012 for failing to provide safe patient care and failing to follow the employer's directives. She had been previously warned and was on a final warning when a patient and a physician complained about her conduct. The employer investigated the complaints and found them accurate. The claimant demonstrated a continuing pattern of disregarding company policy, standards of procedure, and the employer's directives. A repeated failure to follow an employer's instructions in the performance of duties is misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The claimant's conduct shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated January 24, 2013, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. There is no overpayment as a result of this decision.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs