

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TANA HARMS
Claimant

APPEAL NO: 11A-UI-08506-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

TRINITY REGIONAL MEDICAL CENTER
Employer

OC: 05-22-11
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 14, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 21, 2011. The claimant participated in the hearing. Jen Corell, Critical Care Unit Nurse Manager and Ted Vaughn, Human Resources Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time registered nurse for Trinity Regional Medical Center from September 13, 2010 to May 18, 2011. She was discharged for failing to complete her net learning education for the first quarter of 2011; attendance; multiple personal phone calls; failure to report two critical lab values; and falsification of a medical record. On April 20, 2011, the claimant received two written warnings. The first one involved her failure to complete her net learning. The claimant had finished all but one of the required net classes and was having difficulty with the computer showing the classes had been completed. She had to speak with the net education coordinator about her certificates not showing up as done when she did complete the course work. She was not aware the classes were showing up as not completed until she received the written warning and asked the employer to check with the net education coordinator. The employer gave her one week to complete the class and the claimant had the same difficulty with the tests not showing up as completed as she had before. The second written warning involved the claimant's attendance because she had four absences within a six-month period. She was absent October 4, 2010, because her child was in the hospital; October 19, 2010, because she was ill; and on March 1 and March 10, 2011, because she was ill but went to work anyway and was sent home by the charge nurse due to her illness. The claimant received multiple phone calls at the nurses' station and in the human resources office after her identity was stolen when a hacker accessed her bank account. She reported the situation to the police and she and her attorney worked on trying to get the collection agencies,

that came into play after her account was hacked, and the hacker himself from calling the claimant at work but it was effectively out of the claimant's control until her attorney was able to notify all the collection agencies to stop calling her at work. The claimant tried to contact the number on caller identification from the hacker but it was different each time and when she dialed the numbers they were always disconnected. The first time the claimant was told about the phone calls she apologized but did not know how to stop the calls. On April 30, 2011, the claimant learned her husband was cheating on her and then he beat her. The claimant inquired about FMLA but did not qualify and the employer did not tell her she might be eligible for a leave of absence due to the domestic abuse. On May 2, 2011, the employer gave the claimant a mandatory referral to the Employee Assistance Program to work on her financial and domestic issues. On May 14 and 15, 2011, the employer believed the claimant failed to report two critical lab values to the physicians. Employees are required to report critical lab values to the doctor within one hour of receipt but the claimant stated that because she worked 7:00 p.m. to 7:00 a.m. she was often told by the charge nurse just to wait because the doctor would be in within 10 or 15 minutes in the morning. She stated they were undergoing a shift change at the time and the nurse coming on said she would provide the ordered dosage of potassium. With regard to the second issue involving the critical lab value the claimant indicated she had not received any lab sheets and there were no orders in the book. The employer also accused the claimant of falsification of medical records because the claimant documented a heart rate of 66 in a patient's medical records and the automated blood pressure cuff was on the patient between midnight and 4:00 a.m. The patient was assigned to the claimant and the information was handwritten in the patient's chart. The claimant initialed the documentation and the bottom of the form. Upon investigation the electronic documentation showed the patient's heart rate had been over 100 and the automatic blood pressure cuff had not given a reading since May 12, 2011. The claimant stated she took the patient's pulse by hand instead of using the machine and therefore was not required to use the automatic blood pressure cuff. The employer terminated the claimant's employment May 18, 2011, for the above stated reasons.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the 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 proving disqualifying misconduct. 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 substantial and 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). The claimant provided a reasonable explanation for why it appeared she had not completed her net learning classes. With regard to the absenteeism, four absences in six months, three due to her own illness, and two where she went to work and was sent home by the charge nurse, are not considered excessive unexcused absenteeism. The excessive personal phone calls made to the claimant, at the nurses' station and the human resources office, whether she was there or not, came from collection agencies and the hacker who breached her bank account. That was an unfortunate situation that was beyond the claimant's control. She and her lawyer did the best they could to stop the phone calls but were not able to prevent all of them and the claimant should not be held responsible for the fact that her account was hacked and the resulting fallout. Although the claimant may not have handled the critical lab value reports May 14 and 15, 2011, according to the employer's procedures, the charge nurse told her not to contact the doctor because he was going to be there in 10 or 15 minutes anyway and another nurse coming on to the next shift told the claimant she would administer the potassium to the patient. The claimant took the May 15, 2011, patient's pulse manually and as a result was not required to use the automated blood pressure cuff machine. Under these circumstances, the administrative law judge must conclude that the employer has not established intentional, disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The June 14, 2011, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs