

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ELIZABETH HILL
Claimant

APPEAL NO. 11A-UI-06802-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA PHYSICIANS CLINIC
MEDICAL FOUNDATION**
Employer

OC: 04/17/11
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Elizabeth Hill (claimant) appealed an unemployment insurance decision dated May 17, 2011, reference 02, which held that she was not eligible for unemployment insurance benefits because she was discharged from Iowa Health Physicians (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 28, 2011. The claimant participated in the hearing. The employer participated through Kate Hopp, office manager. Employer's Exhibits One through Three were 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 having considered all of the evidence in the record, finds that: The claimant was employed as a full-time licensed practical nurse from August 31, 2010 through April 21, 2011. She was discharged for repeated inappropriate behavior. The claimant was previously counseled on March 23, 2011 for giving a child numerous immunization shots contrary to the doctor's order. The patient was on an alternative shot schedule and had all the four-month shots on February 22, 2011, except for Prevnar. The mother brought her child back in on March 22, 2011 to get the Prevnar shot, but the claimant gave the child all of the four-month immunization shots over again and included the Prevnar. She also did not provide the UIS sheets or the updated vaccination records. The mother was very upset and contacted the doctor that evening. The clinic coordinator contacted the parent on the following day and sincerely apologized for the claimant's actions.

The employer received two parent complaints on April 20, 2011 that the claimant was rude and unprofessional. The doctor had examined a child and the child wanted to play with something

so the doctor gave the child an ear tip and the doctor left the room. The claimant came in shortly thereafter and stated, "What are you doing with that," and snatched it out of hands. The claimant agrees with what happened but testified it was an otoscope and not a tip. She contends it was necessary to take it away so the child did not get hurt. The child then needed a nebulizer treatment and the claimant set it up. The child was crying and the claimant came back in the room and said, "You do not act like this – you settle down right now!" The father was quite upset with the claimant and called in later to complain. He also said the claimant gave him information that a home nebulizer was ready for pick up at Target, but he went there and Target does not even carry this product. The clinic coordinator, Kate Hopp, apologized to the father for the occurrence and inconvenience; she also thanked him for bringing this to her attention.

Another child was in for a two-year physical on April 20, 2011 and the mother called in afterwards and complained that the claimant was very condescending. She thought the claimant was rude and spoke inappropriately. The claimant's body language was very cold and she glared at the mother and her child. The parent had no other complaints about any other staff member. Ms. Hopp also spoke with the mother and sincerely apologized for the situation. The mother asked for the claimant's name and credentials and the employer provided that. The employer had to discharge the claimant after receiving two complaints on the same day.

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 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 claimant was discharged on April 20, 2011 for repeated inappropriate behavior after two parents complained about her rude conduct. She denied all wrongdoing and does not believe she was rude. The claimant had been previously counseled on March 23, 2011 for completely disregarding medical orders and giving a patient duplicate four-month shots when the patient had already received these immunization shots. Past acts and warnings can be used to determine the magnitude of the current act of misconduct, although they cannot be used as the basis for the discharge. See 871 IAC 24.32(8).

The immediate basis for the termination resulted from parent complaints of how the claimant treated their children. The claimant chose to work in a pediatric clinic where the patients are always going to be a challenge. Even though she does not believe her actions are offensive, the children and the parents did and that is what was important. 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 May 17, 2011, reference 02, is affirmed. 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.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw