

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CINDERELLA J MAYER
Claimant

APPEAL NO: 11A-UI-03991-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KRYSILIS INC
Employer

OC: 02/27/11

Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Krysilis, Inc. (employer) appealed a representative's March 25, 2011 decision (reference 01) that concluded Cinderella J. Mayer (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 20, 2011. The claimant participated in the hearing and presented testimony from one other witness, Sharon Acuff. Tom Kuiper of TALX Employer Services appeared on the employer's behalf and presented testimony from two witnesses, Marla Crumm and Christine Hyatt. During the hearing, Employer's Exhibit One was entered 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:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on April 29, 2009. She worked full time as a direct support staff person working in a two-person apartment in Nevada, Iowa, part of the employer's program providing services to intellectually disabled adults. Her last day of work was February 27, 2011. The employer discharged her on March 1, 2011. The primary reasons asserted for the discharge was insubordination and failure to follow the chain of command. There were some secondary reasons cited, but there was no evidence provided of any current incident regarding those reasons, which apparently had been addressed at the time of the December 29, 2010 performance evaluation.

The claimant had been advised in a performance review given to her on December 29, 2010, that she was to bring concerns to the on-call supervisor before contacting a client's guardian or others regarding the concern. There had also been some informal discussions with the claimant on such conduct; most recently, she had been verbally counseled on January 6, 2011 that it would not be appropriate relationship to attend a birthday party by a client's family, and on January 12 was given further explanation by email as to the protocol she must follow in

dispensing and documenting PRN (*Pro re nata* – commonly used in medicine to mean "as needed") medication the claimant administered at the request of a guardian, as compared to the protocol if the guardian dispensed medication to the client themselves.

On February 26 the claimant noted that there was a medication for a resident which was not filled through the end of March. The employer was told by another staff person that the claimant first contacted the client's guardian and then contacted the pharmacy, rather than contacting the supervisor on call. The claimant denied contacting either the client's guardian or the pharmacy regarding her concern on the medication. Rather, she did contact the on-call supervisor, who advised her that it was not filled through the end of the month because the medication was only being administered on a temporary trial basis until a follow up appointment on March 16, and so was not yet authorized through the entire month. Someone else may have contacted the pharmacist, as on February 28 Ms. Hyatt, the waiver coordinator, received a call from the pharmacist's manager checking into the matter, but the claimant denied under oath that she was the person that may have contacted the pharmacist.

Because the employer concluded that the claimant had contacted the guardian and the pharmacist regarding the medication concern rather than contacting the on-call supervisor, the employer determined that the claimant was continuing not to follow the chain of command and the required protocols, and so discharged the claimant.

REASONING AND CONCLUSIONS OF LAW:

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. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is the employer's conclusion that she had contacted the client's guardian and the pharmacist regarding her question on the medication rather than contacting the on-call supervisor. The employer relies exclusively on the second-hand accounts; however, without that information being provided first-hand, the administrative law judge is unable to ascertain whether the persons who relayed the information to the employer might have been mistaken or whether they are credible. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant in fact did contact the guardian or the pharmacist. Rather, the evidence indicates that the claimant properly did contact the on-call supervisor, was satisfied with the answer, and left the matter at that. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's March 25, 2011 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs