

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONNA LASHELL GAMMON (JOHNS)
Claimant

APPEAL NO: 11A-UI-08336-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PINNACLE FINANCIAL GROUP INC
Employer

**OC: 05/15/11
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Donna LaShell Gammon-Johns (claimant) appealed an unemployment insurance decision dated June 13, 2011, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Pinnacle Financial Group, Inc. (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 18, 2011. The claimant participated in the hearing. The employer participated through Heather Dieschbourt, Director of Human Resources and Carol Bohr, Human Resources Manager. Employer's Exhibits One through Four 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 considered all of the evidence in the record, finds that: The claimant was employed as a full-time debt collector from October 5, 2009 through May 26, 2011. She was suspended on May 19, 2011 and discharged on May 26, 2011 for falsification of medical certification provided for leave under the Family Medical Leave Act (FMLA). The claimant had previously provided medical certification from Dr. Jon Kammerer, M.D. and was approved for FMLA from approximately March 29, 2011 through April 29, 2011.

The claimant provided additional medical certification to her employer on May 18, 2011 which was filled out and signed by Dr. Kammerer on May 16, 2011. The employer could not understand several comments on the form so contacted Dr. Kammerer's office. Dr. Kammerer asked for a copy of the medical certification and then returned the same with five circles on the documentation showing where alterations had been made to the original document he provided. Dr. Kammerer confirmed he had not provided the comments that he had circled. The employer went back to the claimant and asked for the original medical certification and the claimant

provided another copy wherein these five areas had been erased or covered with white-out. The claimant never provided the employer with the originals.

When questioned by the employer, the claimant provided several different versions of what happened. She subsequently explained that she gave the document to her physical therapist, Nicole Hershderger. Ms. Hershderger did not sign the document or list on any part of it that the additional comments were hers and not the claimant's physician. The employer tried to contact Ms. Hershderger but was not successful. After further inquiries, the employer learned that Ms. Hershderger is not a physical therapist but is a massage therapist, she is not licensed and works out of her house.

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 May 26, 2011 for

providing falsified medical certification. She denied knowing that the medical certification was altered falsified but her denial is simply not credible. The claimant had previously provided medical documentation filled out by her physician; she knew the purpose and procedure for that documentation. By giving the FMLA paperwork to her friend to provide additional comments, the claimant intentionally falsified the medical documentation that she provided to the employer, regardless of whether she or her friend made the additional comments. 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 June 13, 2011, reference 01, 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/css