

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on a temporary basis on November 11, 2001 at the employer's Carroll, Iowa cardiology clinic. She began working on a permanent basis as of September 16, 2002, and for approximately the last year of her employment worked virtually full time as a medical records and patient representative. Her last day of work was September 1, 2005. The employer discharged her on that date. The reason asserted for the discharge was being difficult to work with and having a negative attitude.

The claimant had received a written disciplinary action on December 20, 2004 because her "communication with co-workers and other offices(') staff (were) not acceptable." She had previously been verbally counseled on December 14 and October 4, 2004 regarding her attitude. Her performance evaluations dated July 7, 2004 had given a performance plan, indicating that there was an issue that "needs improvement or (is) unacceptable" that the claimant needed to "work on improving relationships with coworkers."

Most recently, the claimant's June 16, 2005 performance plan had given a performance plan that the claimant should "continue to focus daily on improving your relationship with your coworkers as we have discussed multiple times the past six months." The claimant's manager was leaving her position on or about August 15, 2005. The claimant understood from her outgoing manager that she was improving on her interpersonal relationships; however, the outgoing manager advised Ms. Doster, the clinic manager of that location and the Fort Dodge location, that she was fearful the claimant would not succeed without the outgoing manager's oversight.

Ms. Doster began inquiring of various persons with whom the claimant worked or had professional interactions as to their experiences with the claimant, and learned that many of these persons felt the claimant was unapproachable or difficult to work with. On August 31, 2005, someone contacted the claimant about a delivery being made to the Carroll office, and the claimant responded that she needed to leave by 5:00 p.m. The person to whom the claimant spoke felt the claimant was being rude and uncooperative; the claimant had not felt she had sounded that way, but had only wanted to convey that she had obligations that would not permit her to stay later than 5:00 p.m. A tech in the claimant's office also reported to Ms. Doster that the claimant had been frustrated and "throwing things around"; the claimant denied this allegation.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue 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 questions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

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

section 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).

Iowa Code section 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The focus of the definition of misconduct is on acts or omissions by a claimant that "rise to the level of being deliberate, intentional or culpable." Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
  - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
  - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
  - a. Manifest equal culpability, wrongful intent or evil design; or
  - b. Show an intentional and substantial disregard of:

1. The employer's interest, or
2. The employee's duties and obligations to the employer.

Henry, supra. The reason cited by the employer for discharging the claimant is her difficulty in working with others. However, there is no current act of misconduct as required to establish work-connected misconduct. 871 IAC 24.32(8); Greene v. Employment Appeal Board, 426 N.W.2d 659 (Iowa App. 1988). While some of the incidents from the past might have constituted misconduct, they were at least months before the claimant's discharge. The incident on August 31, 2005 itself does not arise to the level of misconduct, particularly in light of the fact that the claimant denied the allegations and no firsthand witness was available at the hearing to provide testimony to the contrary under oath and subject to cross-examination. Under the circumstances, the administrative law judge finds the claimant's firsthand information more credible. 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 October 14, 2005 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.

ld/kjw