

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARY N HANNA

Claimant

APPEAL NO: 09A-UI-00230-D

**ADMINISTRATIVE LAW JUDGE
DECISION**

**COMMUNITY MENTAL HEALTH CENTER
OF MIDEASTERN IOWA**

Employer

**OC: 11/09/08 R: 03
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge
Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Mary N. Hanna (claimant) appealed a representative's January 2, 2009 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Community Mental Health Center of Mideastern Iowa (employer). After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held on January 28, 2009. The claimant participated in the hearing and was represented by Michael DuPree, Attorney at Law. Stephen Trefz appeared on the employer's behalf. During the hearing Claimant's Exhibits A and B were 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 there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on March 5, 2001. Since approximately May 2006 she worked part time (20 to 30 hours per week), usually Monday through Thursday, afternoons, as a psychologist in the employer's outpatient mental health service. Her last day of work was November 11, 2008.

The claimant was suffering from some health issues and began missing work in August 2008. There was a period of time in September and October where the claimant was absent for an extended period; she was hospitalized and subsequently underwent surgery on October 6. She was released on October 26, 2008. During her absence she had exhausted her available sick leave and vacation leave.

She left a voice mail for the executive director, Mr. Trefz, indicating she was going to try returning to work on or about November 6. She did not make it into the office until

November 10, when she came in for about five hours in the afternoon, catching up on paperwork and emails. She and Mr. Trefz did not see each other that day, as their offices were on different floors of the facility. On November 11 she came in again at approximately 12:30 p.m. Mr. Trefz became aware she had come in and at approximately 1:00 p.m. and went to see the claimant.

During their discussion Mr. Trefz referred to the claimant having used up all of her leave and noted concern that there had been some client notes found to be missing during her absence. He made a statement to the claimant that she was “not wanted here anymore.” The claimant took this as meaning she was being discharged. She asked if they could discuss the matter further. Mr. Trefz indicated he would get back to her, and then left the claimant’s office. The claimant continued to work until late afternoon, by which time she had not heard anything further back from Mr. Trefz. She then left, assuming that he had decided not to further discuss her continued employment. Upon leaving, she made personal notations as to her recollection of the meeting, and had discussions with family and friends regarding her recollection as to what had happened.

Mr. Trefz indicated that after meeting with the claimant on November 11 he had determined to meet with the claimant again on November 14. He testified that he had written up a note to the claimant to that effect and that he had put it into the claimant’s mailbox outside her office on November 11. However, he was aware that as of the evening of November 11 the note was still in the claimant’s mailbox. He was aware the claimant did not come into the office after November 11. He knew or should have known that the claimant did not get his note about meeting on November 14. However, when the claimant did not come in for the meeting on November 14, he concluded that the claimant had decided not to meet with him and pursue the matter.

Having heard nothing further from Mr. Trefz, on November 18 the claimant left a message for Mr. Trefz indicating she would come in on November 21 to clear out her office; on November 21 she called and left another message indicating something had come up and she would not be in that day. On November 21 Mr. Trefz prepared and sent to the claimant a statement indicating he was taking the claimant’s November 18 message that she would be coming in to clear out her office as a resignation. The claimant did not receive that note until about November 26. By November 25 Mr. Trefz was aware that the claimant had indicated to other staff that she had been discharged, but he did not attempt to recontact the claimant to clarify the situation.

On November 28 the claimant left a further voice mail that she would come in over the weekend to clean out her office, which she did. On December 4 the claimant’s attorney sent Mr. Trefz a response to the statement Mr. Trefz had dated on November 21. The response noted that the claimant disagreed with the assertion that she had quit her position, but rather contended that she had been discharged. Mr. Trefz received the letter, but did not respond.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not eligible for unemployment insurance benefits if she quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

Rule 871 IAC 24.25 provides that, in general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. A voluntary leaving of

employment requires an intention to terminate the employment relationship and an action to carry out that intent. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993); Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989). The employer asserted that the claimant was not discharged but that she quit by not returning to work and announcing that she would be cleaning out her office. The claimant asserted that Mr. Trefz had told her she was “not wanted here anymore,” and that this amounted to a discharge. Mr. Trefz denied using that phrasing, but he did not make any contemporaneous memorandum of the conversation, nor did he contemporaneously discuss the matter with third parties. The administrative law judge finds the claimant’s recollection of the conversation to be more credible.

Mr. Trefz acknowledged that there were things that were said during the meeting as far as expressing concern about the claimant’s work that could have been interpreted or misinterpreted as meeting that she was losing her job. As far as believing the claimant’s failure to report for the further meeting on November 14 was an indication the claimant was quitting, Mr. Trefz knew or should have known that the claimant had not been informed he was agreeing to meet with her again at that time. Further, despite knowing informally at least by November 25 and formally after receipt of the December 4 letter from the claimant’s attorney, Mr. Trefz did nothing to address or resolve the apparent ambiguity in the claimant’s employment status. As the employer had the last clear chance to resolve this ambiguity and chose not to, it became the employer’s action or non-action which ultimately caused the separation.

The administrative law judge therefore concludes that the employer has failed to satisfy its burden that the claimant voluntarily quit. Iowa Code § 96.6-2. As the separation was not a voluntary quit, it must be treated as a discharge for purposes of unemployment insurance. 871 IAC 24.26(21). The issue in this case is then 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 or even had any other choice but 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 decisions. 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 § 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).

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 the employer effectively discharged the claimant was her extended absence from work and discovery of missing client notes during her absence. 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 January 2, 2009 decision (reference 01) is reversed. The claimant did not voluntarily quit and the employer did effectively 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/css