

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LYNNE R POPP
Claimant

APPEAL NO. 12A-UI-11692-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TRIMARK PHYSICIANS GROUP
Employer

**OC: 08/26/12
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Trimark Physicians Group filed a timely appeal from a representative's decision dated September 24, 2012, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on October 25, 2012. Claimant participated. The employer participated by Mr. Ted Vaughn, Human Resource Manager and Ms. Michelle Sleiter, Director of Operations. Nicole Trost did not testify.

ISSUE:

The issue in this matter is whether the claimant was discharged for intentional misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Lynne Popp was employed by Trimark Physicians Group from April 1, 1996 until August 20, 2012 when the claimant was discharged for repetitive errors in her work. Ms. Popp was employed as a full-time licensed practical nurse 1 and was paid by the hour. Her immediate supervisor was Nicole Trost.

A decision was made to terminate Ms. Popp from her employment with Trimark Physicians Group based upon numerous concerns that came to the attention of the employer during the week of August 13, 2012. It was determined on August 13 that the claimant had not sent required information to a primary care provider of a patient regarding medication that had been prescribed for a patient that had been referred to Trimark Physicians Group. It was determined on August 14 that the claimant had not informed a patient about a rescheduled surgery and also determined on August 14 that Ms. Popp had not relayed information to the doctor that one of his patients had been classified as a "drug seeker." The doctor therefore prescribed narcotics for the patient that otherwise may not have been prescribed.

Because of the concerns that had surfaced during that week, the office investigated further and found other instances in which Ms. Popp had failed to provide necessary information to patients

regarding the use of a rehabilitative boot/shoe and had not provided information about an abnormal lab report to the doctor so that a patient could properly be prescribed medication for a gout condition.

Prior to the claimant's discharge Ms. Popp was given an opportunity to explain the errors and omissions that the employer had brought to her attention. However, Ms. Popp did not respond with any explanation or extenuating circumstances. Prior to the incident in question the employer had spoken to Ms. Popp about her performance and the necessity that she stay on track with work assignments and duties.

Ms. Popp does not recall the majority of the instances cited by the employer for her discharge. It is the claimant's belief that another individual had provided the wrong medication to a patient on the instance cited by the employer that came to their attention on August 13. It is the claimant's position that her errors, if any, may have been caused by inadequate staffing and high work volume.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes intentional misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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.

The employer has the burden of establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant but whether the claimant is entitled to unemployment insurance benefits. Infante v. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants the denial of unemployment insurance benefits are two separate decisions. Pierce v. Iowa Department of Job Service, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily always serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based upon carelessness the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa 1988).

An employer may discharge an employee for any number of reasons or for no reason at all if it is not contrary to public policy but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation.

In this matter the evidence in the record establishes that Ms. Popp was a long-term employee of Trimark Physicians Group but that in recent months the claimant made a number of errors or omissions in the performance of her duties. It appears that the employer spoke to Ms. Popp on a number of occasions and attempted to identify with the claimant the reason for the errors that the employer was discovering. Neither the claimant nor the employer could identify any specific reason. However, there is no evidence in the record of wrongful intent on the part of Ms. Popp to perform her duties below her capabilities. Ms. Popp cites increasing job responsibilities and limited staff as possible reasons for the errors or omissions cited by the employer.

The administrative law judge concludes based upon the evidence in the record that the employer made a sound management decision in separating Ms. Popp from her employment because of potential harm to patients and potential liability. The administrative law judge, however, does not conclude that Ms. Popp was intentionally performing below her capabilities or that her carelessness or poor work performance was due to "wrongful intent." It appears that as time progressed the claimant was not able to function at the level of competency that the employer reasonably expected and therefore the claimant was discharged from employment. As the evidence in the record does not establish that the claimant was intentionally performing below her capabilities the administrative law judge concludes that the claimant was discharged under nondisqualifying conditions and therefore the claimant is potentially eligible to receive unemployment insurance benefits provided that she satisfies all other conditions of eligibility.

DECISION:

The representative's decision dated September 24, 2012, reference 01, is affirmed. The claimant was separated under nondisqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets all eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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