

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHERYL M LOWE
Claimant

APPEAL NO. 09A-UI-02205-E2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

COMFORT CARE MEDICARE INC
Employer

**OC: 01/04/09 R: 01
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated February 3, 2009, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 3, 2009. The claimant participated personally. The employer participated by Julie Tow. Exhibits A, 1, and 2 were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds: The claimant last worked for the employer January 9, 2009. The employer discharged the claimant on that date. The claimant was an office coordinator for the employer in the employer's Davenport office. The employer was dissatisfied with the way the claimant handled decisions on December 18, and 19, 2008. An employee agreed to stay that night due to the impending snowstorm so that there would be someone in the office in the morning on December 19, 2008. That person spent the night in the office and fell out of some chairs, while she was sleeping. Paramedics were called and the paramedics broke the lock on the door to get to the employee, who was taken to the hospital. The employer's office was located in a secure building that was closed to the public during non-work hours. The security firm in the building made hourly checks of the office. The medical records were locked in a secure location. The claimant was off work on December 19 but came in to the office after receiving a call from the building security around 6:00 a.m. The claimant did not call her employer and inform her as to this circumstance. Her employer did call the Davenport office and was told about the accident. The claimant left the office around 2:00 p.m. The regular staff person who was to work came in around 2:45 p.m. The employer took no action to terminate the claimant until January 9, 2009. On that day, she terminated the claimant. The notice of termination was read to the claimant and stated she was being terminated for making an unsafe decision by having a staff member stay overnight. (Exhibit 1, page 10) The employer described other incidents that contributed to the claimant's discharge, including an allegation of sleeping

on the job, improperly having her grandchild at the work place, and having staff perform personal errands. The employer did not have any in-person witness testify to such events and did not prove the claimant committed such acts. The claimant denied she had acted improperly

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The gravity of the incident, number of policy violations, and prior warnings are factors considered when analyzing misconduct.

The administrative law judge holds that the evidence has not established that the claimant was discharged for an act of misconduct. The claimant did not violate reasonable written rules or policies. It is clear the employer would have liked the claimant to have handled the incidents of December 18 and 19 differently. The employer has not shown the actions of the claimant on

December 18, and 19, 2008, were misconduct. The employer has not shown there was a current act of misconduct when she was discharged on January 9, 2009.

Therefore, claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

DECISION:

The decision of the representative dated February 3, 2009, reference 01, is affirmed. The claimant is eligible for unemployment insurance benefits, provided she is otherwise eligible.

James Elliott
Administrative Law Judge

Decision Dated and Mailed

jfe/kjw