

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PEGGY S KRAMER**  
Claimant

**APPEAL NO: 14A-UI-06672-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**OC: 06/02/13**  
**Claimant: Respondent (1)**

Iowa Code §96.5(2)a – Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's June 17, 2014 (reference 02) determination that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated at the July 21 hearing. Alyce Smolsky, an Equifax Representative, appeared on the employer's behalf. Ruth Van Gilder, the Director of Nursing, and Philip Maxey were present to testify for the employer. During the hearing Employer Exhibits One, Two, and Three were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

**ISSUE:**

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in July 2013. She worked as a full-time LPN. During her employment, the claimant received a verbal warning on February 7, 2014 for leaving a resident unattended at a nurse's station. The employer also gave her a written warning on February 7 for failing to respond to a door alarm, (Employer Exhibit Two).

On May 28 the claimant attempted to give a new resident an insulin shot. The resident indicated she had never had this before and wanted to see the physician's order for this medication. Without thinking the claimant left the syringe with insulin by the resident's bedside when she went to look up the doctor's order for this medication. Within a few minutes after she left the resident's room, the claimant remembered that she went back to the resident's room to pick up the syringe. The next day the resident checked out of the employer's facility. The claimant understood the resident left because of the way another nurse performed a skin assessment on this resident. The claimant was told the resident also left because the claimant had left a syringe in her room.

On May 29 the claimant was talking to a resident who indicated she had not been allowed to go to Move and Groove. The claimant joked with the resident about not going again that day. The claimant made a comment that the resident might have to report this to the Department of Inspections and Appeals. The claimant did not know this resident's family member had already made a complaint. When the employer talked to the resident about this incident, the resident verified that the claimant had only been joking with her. The employer concluded the claimant's comment could impede the investigation of this complaint.

The employer gave the claimant written warnings for incidents that occurred on May 28 and 29, 2014, (Employer Exhibit One). The employer also discharged the claimant on May 30 because she left a syringe in a resident's room and because her comment to a resident could impede an investigation.

### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. 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 propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

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. 871 IAC 24.32(8).

Even though the claimant made a mistake and committed a safety violation when she momentarily forgot and left a syringe in a resident's room, she recognized her mistake almost immediately and went back to get the syringe. The claimant was negligent when she made this mistake, but this isolated incident does not rise to the level of work-connected misconduct. The employer also discharged her for jokingly telling a resident she should make a complaint to the Department of Inspections and Appeals. Even though the employer concluded the claimant's comment could have been taken as an attempt to impede an investigation, the resident took the claimant's comment as a joke and the claimant did not know an investigation was in progress when she made the comment. While the claimant's comment may amount to poor judgment,

her comment does not rise to the level of work-connected misconduct. Even if the two comments are considered together, the claimant did not commit a current act of work-connected misconduct. As of May 25, 2014 the claimant is qualified to receive benefits.

**DECISION:**

The representative's June 17, 2014 (reference 02) determination is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of May 25, 2014 the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge when it is one of the claimant's base period employers.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/can