

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KRISTINA A ZECHMANN
Claimant

APPEAL NO: 14A-UI-01793-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BEACON OF HOPE HOSPICE INC
Employer

OC: 01/05/14
Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's February 7, 2014 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because she had been discharged for nondisqualifying reasons. The claimant participated in the March 10 hearing. Patrice Kelly-Houston, the director of human resources, and Jeanine Howard, the branch manager, appeared on the employer's behalf. 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 May 2013. She worked as a full-time social worker. Howard supervised the claimant. The employer's policy considers extensive absenteeism grounds for termination.

During the claimant's 90-day probation, she was absent June 13 through 17, 2013. On December 8, the claimant fell on the ice and hit her head. The claimant went to work on December 9, but could not work because she was still shaken up from her fall. The claimant came back to work on December 11. She also had a doctor's appointment on December 11. At the December 11 doctor's appointment, her physician restricted her from work for a week because she had pre-concussion symptoms. The claimant then had CAT scans and x-rays and was restricted from working the second week also. The claimant's husband notified the employer about the claimant's work restrictions. When the claimant was restricted, she could not drive and had to remain in a dark quiet environment.

On December 26, the claimant went to her doctor and was released to work that day. After the claimant was released, she returned to work. The claimant was excited about returning to work and was anxious to see her clients. Before the claimant went to see her clients, Howard told her that they needed to touch base at the end of the day. The claimant did not get back to the

office until after 5:30 p.m. on December 26. When she returned, Howard had left for the day. The claimant did not understand the importance of “touching base at the end of the day” and that Howard wanted a meeting to talk about the claimant’s ability to return to work.

The employer decided to discharge the claimant because she failed to report to the December 26 meeting and because of her excessive unexcused absences. The claimant was not eligible to take a medical leave of absence under FMLA so the employer did not consider the claimant’s absences in December excused. The employer discharged the claimant on December 27, 2013.

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).

The employer discharged the claimant for business reasons. The evidence does not establish that the claimant committed work-connected misconduct. The claimant notified the employer about her work restrictions after her doctor diagnosed her with pre-concussion symptoms. While the claimant used poor judgment when she did not ask Howard what time she wanted to talk to the claimant on December 26, the claimant went back to the office at the end of her work to talk to Howard, but Howard had already left. As of January 5, 2014, the claimant is qualified to receive benefits.

DECISION:

The representative's February 7, 2014 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of January 5, 2014, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css