

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SANDRA K NELSON
Claimant

APPEAL NO. 07A-UI-06660-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 06/10/07 R: 01
Claimant: Appellant (2)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated July 3, 2007, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on July 24, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing with her representative, Robert Green, and witness, Libby O'Connor. Alyce Smolsky participated in the hearing on behalf of the employer with witnesses Rachel Janik, Laura Van Sloten, and Jackie Blanchard. Exhibits One through Seven were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a licensed practical nurse from July 4, 2004, to June 11, 2007. The claimant had received a final warning and suspension on November 15, 2006, for giving medication without a proper doctor's order. The first incident involved the claimant giving a resident who was a choking risk a Tylenol suppository for a fever condition rather than the oral Tylenol on the doctor's order. The second incident involved a resident who had returned from the hospital without a doctor's order for pain medication. The claimant gave the resident who was complaining of pain, medication that had been on the doctor's order before the resident went to the hospital.

The claimant was informed and understood that under the employer's work rules, when a fall by a resident occurred, the charge nurse was to do a complete physical assessment, administer first aid if needed, complete the investigation form, interview witnesses to the accident, notify the family and doctor, document the incident in the nurse's notes, and continue observation of the resident.

On June 11, 2007, the claimant arrived at work at 10:00 p.m. and was getting the end of the shift report from another LPN, Libby O'Connor, who had been working at the facility for a short period of time. They were notified by two certified nursing assistants (CNAs) that a resident was

on the floor in his room. The claimant went to the room and asked the resident if he had fallen and whether he was hurt. He responded that he had fallen and hit his head but was not hurt.

The claimant told the CNAs to clean up the resident because there was bowel movement on him. The claimant went out to the nurse's station to get her pen light and stethoscope so she could properly assess the resident. O'Connor followed her out of the room and to the nurse's station. They stopped at the nurse's station to pick up the pen light and stethoscope, and returned to the room to do the assessment. They were only away from the room for a couple minutes and did not dawdle in getting back.

When they got back, a registered nurse (RN) working on another hall was in the room doing the physical assessment of the resident because a CNA had notified her about the fall. The claimant and O'Connor assisted the RN in performing the items required by the employer's work rules. The claimant believed that the RN was doing the assessment and she was not going to interfere. The claimant called for an ambulance and helped O'Connor complete the documentation for the incident.

On June 12, 2007, the employer discharged the claimant for failing to properly assess a resident who had fallen.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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 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 substantial and 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 findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and the reliability of the evidence and by applying the proper standard and burden of proof. The claimant testified credibly and her testimony was corroborated by O'Connor that the claimant went out to the nurse's station to get her pen light and stethoscope so she could properly assess the resident and returned right away.

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. No willful and substantial misconduct has been proven in this case or repeated negligence that rises to the level of willful misconduct in culpability. At most, there was a good-faith error in judgment by the claimant not insisting that O'Connor stay in the room until she returned or in not directing O'Connor to go to the nurse's station to get the equipment.

DECISION:

The unemployment insurance decision dated July 3, 2007, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw