

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**BRENDA S BLASINGAME  
334 – 7<sup>TH</sup> AVE SW  
OELWEIN IA 50662**

**PEOPLES MEMORIAL HOSPITAL  
BUCHANAN COUNTY HEALTH CENTER  
1600 – 1<sup>ST</sup> ST STE  
INDEPENDENCE IA 50644-3155**

**Appeal Number: 04A-UI-08329-BT  
OC: 07/11/04 R: 04  
Claimant: Appellant (1)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Brenda Blasingame (claimant) appealed an unemployment insurance decision dated July 20, 2004, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Buchanan County Health Center (employer) for work-connected misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 24, 2004. The claimant participated in the hearing. The employer participated through LuAnn Brodigan, Long Term Care Nurse Supervisor. Employer's Exhibits One and Two were admitted into evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time certified nursing aide from November 17, 2003 through June 28, 2004. She was discharged for repeatedly violating the no-smoking policy. Prior to being hired, the claimant was advised a new no-smoking policy would go into effect on December 1, 2004, as a result of which, employees could not smoke during their eight-hour shifts at work. Employees would not be allowed to smoke during supper breaks, other breaks, or even in their cars in the parking lot. The claimant accepted employment under this condition even though she was a smoker.

Aside from reports that she frequently went outside to "call her husband on the cell phone," the employer did not have any reports of the claimant smoking on duty until April 14, 2004. The employer questioned the claimant about it but the claimant denied smoking while on duty. A subsequent meeting was held with the employees on June 23, 2004, in which the smoking policy was addressed and employees were reminded it was going to be strictly enforced. On June 24, 2004, a co-worker reported the claimant was smoking while on duty. The employer issued a warning to the claimant and advised her it would not be tolerated. On Saturday, June 26, 2004, two separate co-workers and one charge nurse observed the claimant smoking on duty and reported it to the employer. On June 27, 2004, another co-worker reported the claimant had again been smoking. On that same day, a nurse on duty heard the claimant questioning a resident's husband as to whether he was the one who turned her in for smoking. The supervisor did not return to work until Monday, which is when she spoke with the claimant. The claimant was discharged for repeated policy violation and inappropriate behavior towards a resident's family member.

During the hearing, the claimant provided testimony that she frequently smoked while on duty. She further testified that she saw others break the policy but never reported this to the employer since she did it herself.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code Section 96.5-2-a.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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 claimant was discharged for a repeated policy violation and inappropriate conduct towards a resident's family member. She admitted she violated the no smoking policy and failed to report it when others violated it. The claimant's repeated violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated July 20, 2004, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

sdb/kjf