

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NANCY A BLUM**  
Claimant

**APPEAL NO. 08A-UI-05248-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FIVE STAR QUALITY CARE INC**  
Employer

**OC: 05/11/08 R: 01  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated June 2, 2008, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on June 16, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Darlene Brown participated in the hearing on behalf of the employer with witnesses, Eric Seitz and Julie Lidgett. Exhibit A was 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 direct support professional from August 5, 1997, to May 12, 2008. The employer is a provider of services to mentally disabled persons. The claimant was informed and understood that under the employer's work rules, employees were required to get permission to use personal time off (PTO).

On April 24, 2008, the claimant requested PTO for May 8 and 9, 2008. Her supervisor, Julie Lidgett, informed the claimant that her PTO would be approved unless state inspectors were in the facility on those days.

On May 7, 2008, Lidgett determined that state inspectors was going to be in the facility on May 8 and 9. She informed the claimant that she was denying the PTO request based on the state inspectors being in the facility. The claimant told Lidgett that she was going to take the time off anyway. Lidgett again told the claimant that her request for PTO was denied and she would have to talk to the administrator, Eric Seitz.

The claimant then asked Seitz for PTO. Seitz disapproved the request. The claimant told Seitz that she needed the time off and would not be at work on May 8 and 9. She explained that she was experiencing stress on the job. When the claimant left she again stated she would not be

at work and would probably have to check to see if she still had a job on Monday. The claimant knew that her job was in jeopardy if she missed work on May 8 and 9.

The claimant called in on May 8 and 9 and stated she would not be into work. She took the time off because she was under stress due to changes in her job and because she and her husband wanted to celebrate their anniversary together and her husband worked on weekends.

On May 12, 2008, the employer discharged the claimant for being absent after having her time off request denied.

### **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.

The claimant's conduct in taking time off in direct disobedience of her supervisors 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. Although the claimant submitted a doctor's statement about some physical problems she was having, the statement was prepared at the end of May. The claimant did not provide any reason

to the employer for missing work other than being under stress. She did not obtain a medical excuse to justify her need to be off work before she took the unapproved time off.

**DECISION:**

The unemployment insurance decision dated June 2, 2008, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/css