

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROSALIND B PEREIRA-RATTAY
Claimant

APPEAL NO. 10A-UI-06993-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABCM CORPORATION
Employer

OC: 04/11/10
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated May 3, 2010, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on July 1, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing with her representative, Rustin Davenport, attorney at law. Raymond Aranza, attorney at law, participated in the hearing on behalf of the employer with witnesses, Mary Smith and Rosemary Tobin. Exhibits One through Seven and A and B were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as a certified nurse's aide (CNA) from December 29, 2008, to April 13, 2010. After the claimant was offered and accepted her job, she was given an occupational health assessment form to complete to evaluate her ability to perform the essential functions of her job with or without accommodations to allow the employer to place her in a job that would not jeopardize her or others' safety or health.

Prior to her being hired by the employer, she had she had worked as CNA in Illinois. She had suffered a back injury at work in 2006, for which she received medical treatment covered by workers' compensation. She has continued to take pain medication for this condition. On the occupational health assessment, however, she checked "no" to the following questions: (1) have you ever had a work-related injury or illness and (2) have you ever received workers' compensation benefits? She did not answer the question asking for comments regarding any past work-related injuries. She did check "yes," to the following questions: (1) have you ever had serious, recurring, or treated back injury, pain, spasms, or strain, and (2) have you ever been treated by a chiropractor for a back problem of any kind? In the comments section, she said she had a car accident in Texas 2001 with an injury to her lower back. She did not mention anything about the accident that she had at work in Illinois.

The claimant had to have known that she was untruthfully answering the work-related injury question and was withholding material information when she failed to comment about the work-related injury she had in Illinois.

The claimant fell at work on February 23, 2010, and injured her knees and lower back. The injury was not a work-related injury until March 19, 2010, when her condition had not improved and she was referred for treatment on March 19. Later, the doctor who treated the claimant informed the employer that the claimant had a chronic back problem for which she had received treatment in October, December, January, and February. The employer investigated and discovered the claimant had a prior workers' compensation injury. She was discharged for this on April 13, 2010.

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.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code section 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

871 IAC 24.32(6) provides:

(6) False work application. When a willfully and deliberately false statement is made on an Application for Work form, and this willful and deliberate falsification does or could result in endangering the health, safety or morals of the applicant or others, or result in exposing the employer to legal liabilities or penalties, or result in placing the employer in jeopardy, such falsification shall be an act of misconduct in connection with the employer.

Although an application for work is not exactly the same as the occupational health assessment, I believe the principles are the same. The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I conclude the claimant willfully made false statements and withheld material information on her occupational health assessment. This information was requested to allow the employer to place her in a job that would not jeopardize her or others' safety or health. Work-connected misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated May 3, 2010, 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.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs