IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

HALLIE M RICE
Claimant

CARROLL HEALTH CENTER
Employer

APPEAL NO: 10A-UI-03906-DWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/31/0
Claimant: Respondent (4)

Section 96.4-3 – Able to and Available for Work
Section 96.5-2-a – Discharge
Section 96. 3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed a representative's March 2, 2010 decision (reference 01) that held the claimant eligible to receive benefits because even though she was working part time, she was working reduced hours. A telephone hearing was held on April 13, 2010. The claimant participated in the hearing. The employer did not respond to the hearing notice.

After the hearing had been closed and the claimant had been excused, the employer contacted the Appeals Section. The employer made a request to reopen the hearing. Based on the employer's request to reopen the hearing, the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is there good cause to reopen the hearing?

Is the claimant working for the employer the same hours she was hired to work or is she working reduced hours?

Has the claimant been overpaid any benefits?

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in 2005 or 2006 as a full time CNA. The claimant asked to work part time during the summer so she could spend more time with her children. Recently instead of returning to full-time work, the employer continued scheduling the claimant to work part time. In late 2009 the claimant understood the employer's census was down and did not need as many CNAs to work. In January 2010, the employer changed the claimant's

status from part time to PRN or an on-call/as-needed basis. The claimant did not understand why the employer changed her employment status.

The claimant established a claim for benefits during the week of January 31, 2010. The last day the claimant actually worked for the employer was February 14. Although the claimant usually worked until 2:00 p.m., the employer sent her home at noon that day. In February, there was one time when the claimant did not hear the employer call her late at night. Another time the claimant was unable to work because she could not get to work because of adverse weather or road conditions. The claimant asked the employer to call her cell phone number, but the employer called her home phone number.

The employer asked the claimant to work the weekend of March 6. The claimant planned to work that weekend until she fell and injured herself. She contacted the employer on March 5 to notify the employer that she was unable to work that weekend because she had fallen and hurt her tailbone. The claimant's doctor restricted her from working for a week.

The week of March 8, the claimant received a letter from the employer informing her that she was no longer an employee. The employer indicated she had been discharged because she had been not been available to work when the employer called or needed her, she made demeaning statements about the employer on her Facebook page and she was unable to work a week because of her injury.

The claimant filed for and received benefits for the week ending March 13, 2010. The claimant received her maximum weekly benefit amount of $256.00 plus an additional $25.00 she received from the government's economic stimulus program.

After the hearing had been closed and claimant had been excused, the employer contacted the Appeals Section to participate in the hearing. The administrator acknowledged she received the hearing notice but because it was a form, she did not read it. She noted the date and time of the hearing and assumed she would be called for the hearing.

REASONING AND CONCLUSIONS OF LAW:

If a party responds to a hearing notice after the record has been closed and the party who participated at the hearing is no longer on the line, the administrative law judge can only ask why the party responded late to the hearing notice. If the party establishes good cause for responding late, the hearing shall be reopened. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. 871 IAC 26.14(7)(b) and (c).

Since the law specifically states that failure to read or follow the hearing instructions does not constitute good cause to reopen the hearing, the employer's request to reopen the hearing is denied.

The evidence indicates the employer recently changed the claimant from part-time employee to a PRN or on-call/as-needed employee. As a result, the claimant worked reduced hours. Since the claimant's hours had been reduced, she established that she was partially unemployed as of January 31, 2010. 871 IAC 24.23(26). The evidence indicates the claimant was not available to work every time the employer called her to work. For unemployment insurance purposes, a claimant does not have to be available every day, just the majority of a week. When the employer called her to work one day and the claimant was unable to work that day or shift does

not mean the claimant is not eligible to receive benefits or was unavailable for work for unemployment insurance purposes. Iowa Code § 96.4-3.

The facts establish the claimant was not able to or available for work the week ending March 13. This is the week her doctor restricted her from working. 871 IAC 24.23(6).

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3-7. The claimant is not legally entitled to receive benefits for the week ending March 13, 2010. She has been overpaid a total of $281.00 in benefits for this week.

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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The fact the claimant was unavailable to work because she injured her tailbone does not constitute work-connected misconduct. The law specifically states that inability or incapacity does not constitute work-connected misconduct. The employer's termination letter indicated the employer also discharged the claimant because of demeaning statements the claimant put on her Facebook page about the employer. The claimant's Facebook indicates frustration with an employer, but the claimant does not identify her employer. The claimant does not understand what comments the employer considered demeaning. The evidence does not establish that the claimant committed work-connected misconduct.

While the employer may have had business reasons for discharging the claimant, the reasons, as expressed in the claimant's termination letter, do not rise to the level of work-connected misconduct. As of January 31, 2010, the claimant is qualified to receive benefits. The claimant is not eligible to receive benefits for the week ending March 13, 2010.

DECISION:

The employer's request to reopen the hearing is denied. The representative's March 2, 2010 decision (reference 01) is modified in part. The claimant is eligible to receive benefits as of January 31, 2010, because she was working reduced hours and is considered available for work for unemployment insurance purposes. The employer discharged the claimant the week

of March 7 for reasons that do not constitute work-connected misconduct. Based on the reasons for her employment separation, the claimant is qualified to receive benefits. The employer's account may be charged. The claimant is not eligible to receive benefits for the week ending March 13, 2010, because she was restricted from working that week and was not able to or available for work that week. She has been overpaid and must repay a total of $281.00 in benefits she received for the week ending March 13, 2010.

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Debra L. Wise
Administrative Law Judge

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Decision Dated and Mailed

dlw/css