

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**FROSTI L CHICCHELly**  
Claimant

**APPEAL NO. 09A-UI-01977-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**COMFORT CARE MEDICARE INC**  
Employer

**Original Claim: 01/04/09  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Comfort Care Medicare, Inc. (employer) appealed a representative's January 30, 2009 decision (reference 01) that concluded Frosti L. Chicchelly (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 2, 2009. The claimant participated in the hearing. Julie Tow appeared on the employer's behalf. Based on the evidence, the arguments of the parties, a review of the law, and assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on February 1, 2008. She worked part time (approximately 30 hours per week) as a marketing and pediatric coordinator in the employer's home healthcare agency. Her last day of work was December 18, 2008. The employer discharged her on that date. The reason asserted for the discharge was spreading false rumors about the owner/administrator, Ms. Tow.

On about December 17, the director of nursing at the employer's Davenport office indicated to Ms. Tow that she should speak to two other employees in the office about something the two employees indicated had been said by the claimant to them on or about December 12. Ms. Tow did speak to the two employees, and they indicated that on or about December 12 the claimant had made comments that Ms. Tow was hardly ever in the office and that when she was there she was drinking (alcohol). As a result of this report, Ms. Tow discharged the claimant. At the hearing under oath the claimant testified that she had never said anything like the reported comments.

**REASONING AND CONCLUSIONS OF LAW:**

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 § 96.5-2-

a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is the alleged comments about Ms. Tow. However, the claimant denied the allegations under oath. The employer relies on the second-hand account from the two employees in the Davenport office; however, without that information being provided first-hand, the administrative law judge is unable to ascertain whether the witnesses might have been mistaken or whether they are credible. The administrative law judge finds the claimant's first-hand testimony to be more credible. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

**DECISION:**

The representative's January 30, 2009 decision (reference 01) is affirmed. The employer did discharge the claimant, but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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