

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SONYA S OPPMAN
Claimant

APPEAL NO: 07A-UI-08799-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NURSEFINDERS OF DES MOINES
Employer

OC: 07/29/07 R: 02
Claimant: Respondent (5)

Section 96.5-2-a – Discharge
871 IAC 24.32(9) – Suspension or disciplinary layoff

STATEMENT OF THE CASE:

Nursefinders of Des Moines (employer) appealed a representative's September 6, 2007 decision (reference 01) that concluded Sonya S. Oppman (claimant) was qualified to receive unemployment insurance benefits after at least a temporary separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 11, 2007. The claimant participated in the hearing and was represented by Linda Murphy, attorney at law. Mike Adams appeared on the employer's behalf. During the hearing, Claimant's Exhibits A and B were entered into evidence. Based on 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.

ISSUE:

Was the claimant discharged or suspended for work-connected misconduct?

FINDINGS OF FACT:

The employer is a temporary medical staffing employment firm. The claimant began taking assignments with the employer on or about October 10, 1998. Her most recent assignment was a one day assignment that began at 11:00 p.m. on July 29 and ended at 7:30 a.m. on July 30. She worked part time as a patient companion and certified nursing aide (CNA).

The claimant had injured her back in August 2006 while in a store on personal time. She continued to work but was seen by a doctor over the next year. On July 12 she had a functional capacity evaluation; on July 31 she received the results, which indicated she had lifting restrictions of no more than 35 pounds. On that date she informed the employer of the results of the evaluation. While the claimant's job did not typically involve such lifting, her job description did indicate that she needed to be able to lift more than that in order to lift patients and do patient transfers safely. As a result, due to liability concerns should the claimant be further injured if she worked beyond her restrictions, on July 31 the employer informed the claimant that she would not be scheduled for other work until or unless she could present a full release without restrictions.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged or suspended 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 or suspended for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to temporarily or permanently 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 or suspension 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).

Iowa Code § 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.

871 IAC 24.32(9) provides:

(9) Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct

must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

The reason cited by the employer for either temporarily or permanently suspending the claimant from being assigned to work is her medical restrictions. While the employer may have a good business reason for taking the claimant off work and the employer is not compelled to provide the claimant with work within her restrictions, an inability of a claimant to perform all of her job duties due to a non-work-related medical condition is still not misconduct Wells v. Employment Appeal Board, 447 N.W.2d 137 (Iowa 1989). The employer has not met its burden to show disqualifying misconduct. Cosper, supra. 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 September 6, 2007 decision (reference 01) is affirmed as modified with no effect on the parties. The employer discharged or suspended the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs