

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TAMI L JOHNSON
Claimant

APPEAL NO. 14A-UI-05921-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 05/11/14
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated May 30, 2014, reference 02, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on July 1, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Alyce Smolsky participated in the hearing on behalf of the employer with witnesses, Alan Bruinsam and Cindy Hambly.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked as a certified nursing assistant for the employer from February 15, 2013, to April 18, 2014. The claimant was informed and understood that under the employer's work rules, regular attendance was required and employees were required to call the facility at least two hours before the start of their shift if they were not able to work as scheduled.

The claimant was absent without notice to the employer on April 23, 2014. On April 25, 2014, she had to take her sick son to the doctor. She failed to call the facility two hours before the start of her shift to let the employer know she was going to be absent. Instead, she sent a text message to the director of nursing 10 minutes before the start of the shift that she was taking her son to the doctor and would not be in. The director of nursing replied that she would need to bring in medical documentation. The director of nursing had notified the claimant and other staff that they were not to text her regarding absences but instead were to call the facility. This was because there were times when she did not have her cell phone on or with her. The claimant violated this instruction when she texted the director of nursing.

The claimant reported to the facility on April 29. She did not provide the employer with documentation about her doctor's visit. She was discharged by the employer for her violation of the employer's attendance policy on April 23 and 25.

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 § 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).

The claimant's violation of a known work rule 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. The claimant had been specifically told that notification of an absence by text was not allowed but did it anyway. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated May 30, 2014, reference 02, 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