

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CASSIE L YERINGTON
Claimant

APPEAL NO: 14A-UI-04782-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 04/13/14
Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's May 1, 2014 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because she had been discharged for no disqualifying reasons. The claimant participated at the hearing. Alyce Smolsky, a representative with Equifax, represented the employer. Brandon Kranovich, the administrator, and Linda Grinstead, the director of nursing, testified on the employer's behalf. During the hearing, Employer Exhibits One through Four were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting a current act of work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in July 2013. The employer hired her to work as a full-time CNA. When the claimant started her employment, she received a copy of the employer's policies. One of the rules informed her that failing to complete an incident report of on-the-job accidents and notifying her supervisor by the end of your shift was a violation of the employer's rules. (Employer Exhibit Four.) The first offense for this violation results in a final written warning and a three-day suspension, if an employee does not already have a final written warning.

During her employment, the claimant received some written warnings. The claimant understood that after she received a final written warning on March 31, 2104, her job was in jeopardy. (Employer Exhibit Two.) The claimant received her first written warning on March 24, 2014. (Employer Exhibit Three.) She received the March 24 warning because she did not double bag soiled briefs she had discarded. The claimant acknowledged she may not have double-bagged some soiled briefs on March 14 because the employer was short-staffed during that shift. The claimant denied that on March 12, 2104, she took a resident back to her room and left the resident alone. The claimant identified the employee who had taken the resident to her room and left her.

On March 31, the employer gave the claimant a final written warning (Employer Exhibit Two) for performance issues. The employer gave the claimant this final written warning after three employees reported the claimant had been rude to a new employee and did not answer her pages. The claimant denied she had been rude and only told a new employee that she did not need help with one resident. The claimant did not make the comment the employee reported. Also, the claimant does not get many of her pages because the pagers did not work correctly. Although the claimant did not get the weights of five residents recorded on March 26, she had reported this to her supervisor on March 26. The claimant's supervisor did not report to the charge nurse that the claimant told that her she had not gotten the weights of five residents.

On April 6, when the claimant was positioning a resident, she did something to her shoulder. At that time, the claimant did not believe she had hurt her shoulder to the extent she needed to see a doctor. As a result, she did not report the incident to the employer on April 6. The claimant was then off work the next two days. Her shoulder started hurting and she took Ibuprofen and put ice on her shoulder. On April 9, the claimant went to work and her shoulder still bothered her. The claimant did not want the employer to think she was a complainer or trying to get out of work so she did say anything about her shoulder until she had completed all her work. The claimant then asked Grinstead if she needed to see a doctor about her shoulder. The claimant then reported the April 6 incident.

On April 10, the employer informed the claimant she was discharged because the employer required employee to report work-related incidents during the shift in which they occurred. The employer did not care if the employee needed medical treatment, all incidents were supposed to be reported. Since the claimant had already received a final written warning, the next step in the employer's disciplinary policy required the employer to discharge the claimant. (Employer Exhibit One.)

The claimant established a claim for benefits during the week of April 13, 2014. An Equifax representative participated at the fact-finding interview on the employer's behalf. The claimant filed claims for the weeks ending April 19 through June 7, 2014.

REASONING AND CONCLUSIONS OF LAW:

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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

With the exception of the most recent incident, the employer's witnesses had no first-hand personal information about the incidents the employer gave the claimant warnings. As a result, the claimant's testimony as to what happened in March that led to the written and final written warnings must be given more weight than the employer's reliance on hearsay information from employees who did not testify at the hearing.

After the claimant received the final written warning, she knew or should have known her job was in jeopardy. On April 6, when the claimant's shoulder started hurting after she repositioned a resident, she did not think she would have to go to a doctor. The claimant incorrectly understood that if an employee needed to go to a doctor she was to report the incident, but if there was no need to go to a doctor, then the incident did not need to be reported. Even on April 9 when the claimant went to talk to Grinstead she was not planning to go to a doctor; she just wanted Grinstead's opinion. The evidence does not establish that the claimant intentionally disregarded the employer's policy. Instead, she did not understand she was to report all incidents even ones that did not need medical treatment. The employer acknowledged that if the claimant had not received a final written warning for performance issues before, the employer would not have discharged the claimant on April 10 for failing to timely report she hurt her shoulder on April 6.

The employer established business reasons for discharging the claimant, but the claimant did not commit a work-connected misconduct. As of April 13, 2014, the claimant is qualified to receive benefits.

DECISION:

The representative's' May 1, 2014 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of April 13, 2014, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css