

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MELISSA A PORTER**  
Claimant

**APPEAL NO: 13A-UI-05648-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CHILDREN AND FAMILIES OF IOWA**  
Employer

**OC: 11/18/12**  
**Claimant: Respondent (1/R)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's May 8, 2013 determination (reference 02) that held the claimant eligible to receive benefits and the employer's account is subject to charge because the claimant's employment separation was for nondisqualifying reasons. The claimant participated in the hearing. Sharon Haning and Jennifer Bartels appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes

**ISSUE:**

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

**FINDINGS OF FACT:**

The claimant started working for the employer on March 8, 2013. The employer hired the claimant to work as a full-time overnight shelter advocate. The claimant worked 11 p.m. to 7:30 a.m.

The claimant understood she was required to notify the employer each day she was unable to work as scheduled. Even though the employer's policy informed employees they were to notify both the on-site supervisor and their immediate supervisor, the claimant observed employees unable to work only contacting the on-site supervisor. Prior to April 10, the claimant's job was not in jeopardy.

On April 7, 8 and 9, the claimant called the on-site supervisor and reported she was unable to work because her child was ill. On April 10, the on-site supervisor sent the claimant a text message around 4 p.m. and asked if the claimant would be at work that night. The claimant responded and told the on-site supervisor she was unable to work because her child was ill and she did not know if she would be able to work the next night either. On April 10 and 11, the claimant was at an Iowa City hospital because her child had a concussion.

The claimant did not call or report to work on April 11. On April 12, 2013, the employer sent the claimant a termination letter. The employer terminated the claimant for failing to properly notify the employer on April 11 that she was unable to work. The employer's policy requires employees to notify their supervisor before a scheduled shift when they are unable to work. The claimant was to contact the employer by 5 p.m. when she was unable to work as scheduled.

In deciding to discharge the claimant, the employer also considered a client's complaint that the claimant had acted in a threatening manner toward this client. The employer did not talk to the claimant about this incident that happened before April 7, 2013.

### **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).

The employer discharged the claimant because she failed to notify the employer on April 11 that she was still unable to work. The claimant used poor judgment when she did not notify the employer on April 11 that she again would not be at work because her of child's medical issues. Since the claimant previously notified the employer that she was unable to work, even though she had not contacted Bartels, her failure to notify the employer on April 11 does not rise to the level of work-connected misconduct.

The employer established justifiable business reasons for discharging the claimant. The evidence does not establish that the claimant committed work-connected misconduct. While the employer considered the client's complaint that she felt threatened by the claimant, the employer acknowledged the claimant had been discharged for failing to notify the employer on April 11 that she was unable to work. As of April 21, 2013, the claimant is qualified to receive benefits.

The employer is not one of the claimant's base period employers. Therefore, during the claimant's current benefit year, the employer's account will not be charged.

Since the claimant started working for the employer on March 8, an issue of whether the claimant properly reported wages she earned from March 8 through 23, 2013, will be remanded to Investigations and Recovery.

**DECISION:**

The representative's May 8, 2013 determination (reference 02) is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of April 21, 2013, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. During the claimant's current benefit year, the employer's account will not be changed.

An issue of whether the claimant correctly reported wages she earned from the employer from March 8 though 23 is **Remanded** to Investigations and Recovery.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs