

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATHLEEN M RENKEN
Claimant

APPEAL NO. 06A-UI-09225-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOOD SAMARITAN SOCIETY INC
Employer

**OC: 08/13/06 R: 01
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated September 8, 2006, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on October 2, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing. Corrine Herdina participated in the hearing on behalf of the employer with a witness, Deb Hyer. Exhibits One through Six were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked part-time for the employer as a cook from February 2, 2000, to August 16, 2006. The claimant was informed and understood that under the employer's work rules, inconsiderate treatment was grounds for discipline. The claimant received a written warning on August 4, 2005, for inconsiderate treatment of another employee due to her tone of voice and attitude toward a coworker. She was issued another warning on December 13, 2005, for inconsiderate treatment of an employee after she did not make a malt that a nurse had requested for a resident. The claimant did not make the malt because she was busy getting supper ready.

On August 12, 2006, the claimant returned to work after being off work for several days because her daughter had been seriously injured in an accident. The claimant knew that the evening meal was going to be a picnic, but she did not know until late morning that the picnic included family members. She was the only cook on duty so this meant that she had to be ready to serve twice as many people as normal. She became frustrated when she discovered late in the afternoon that the hamburger patties listed on the picnic had not been purchased and that they were short on hamburger buns. She expressed to another staff member that her main concern was that the residents were fed. Another staff member reported to management that the claimant displayed a negative attitude, had said in front of family members that she only cared that the resident's got fed, and did not help enough with serving the meal. The claimant

performed her cooking duties to the best of her ability that day but was short with some employees because of the stress of the day and concerns about her daughter.

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.

Iowa Code section 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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 substantial and 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).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. At most unsatisfactory work performance has been proven, which did not rise to the level of disqualifying misconduct.

DECISION:

The unemployment insurance decision dated September 8, 2006, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/cs