

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KIFLETSADIK MULUGETA**  
Claimant

**APPEAL NO: 13A-UI-10868-DW**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE UNIVERSITY OF IOWA**  
Employer

**OC: 08/18/13**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's September 13, 2013 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated at the December 3, 2013 in-person hearing in Cedar Rapids. Mary Eggenburg and Don Swanson, the nurse manager, appeared on the employer's behalf. During the hearing, Employer Exhibit One and Claimant Exhibit A was 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 work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in March 2004. In January 2010, he started working as a psychiatrist nursing assistant. The claimant received a written warning and five-day suspension on December 8, 2011. The claimant received the suspension for using a computer in a patient's room. The next step in the employer's progressive disciplinary policy is termination. The suspension the claimant received on December 8, 2011, is considered by the employer for two years.

The claimant had not received any disciplinary action since the December 2011 suspension. On August 14, 2013, the claimant worked, but he was not working in the unit where an aggressive patient had been assigned. The claimant would be assigned to this patient the next shift he worked.

Around midnight, the claimant accessed this patient's records in an attempt to find out more about the patient before he was assigned to her. The claimant has accessed other patients' records before he was assigned to the patient without any problem. Even though the claimant was not assigned to that patient during the August 14 shift, the claimant had no understanding it was improper for him to access this patient's records.

Around 5:30 a.m. on August 14 the claimant went on break and went to the kitchen to get some coffee. When the claimant went to get coffee, he had to walk by the area the aggressive patient was located. (Claimant Exhibit A.) The patient had gotten up to use the bathroom when the claimant came to get coffee. Several staff were with the patient because no one knew what the patient would do. The claimant made a comment to a staff member, C., that we are lucky to have chromosomes that are normal. This patient had abnormal chromosomes. While the claimant sensed staff were tense because the patient was aggressive, the claimant did not help staff with this patient because there was no need to do this. After the claimant got his coffee, he went back to his assigned unit.

The next day a few staff members, reported that the claimant talked to a staff member about the patient's health condition and appeared to be very interested in the patient's genitals. As a result of the report made by staff, the employer suspended the claimant on August 18 to investigate.

During the investigation, the employer learned the claimant had accessed the patient's records during his shift and reviewed the records for 24 minutes. The employer concluded that the claimant was overly interested in this patient and it was no longer safe for him to work in the psychiatric unit. The employer concluded the claimant could take advantage of these vulnerable patients.

On August 23, the employer sent the claimant a letter informing him he was discharged. The employer discharged him for accessing a patient's record when he was not providing care for this patient and because it was reported the claimant tried to observe the patient who was being cared for in the bathroom. The employer concluded the claimant's behavior that night was inappropriate and was not conducive to safe patient care. (Employer Exhibit One.)

### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him 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 relied on hearsay information from employees who did not participate at the hearing. The claimant's testimony is credible as to what occurred during his August 14 shift. As a result, the claimant's version of the incident around 5:30 a.m. must be given more weight than the employer's version based on reports from other employees. The evidence does not establish that the claimant displayed inappropriate behavior regarding this patient when he went to get coffee on his 5:30 a.m. break.

Since the claimant had previously accessed patient records to learn about a patient before he cared for them without being disciplined, the claimant did not commit work-connected misconduct on August 14. The employer established justifiable business reasons for discharging the claimant. Since Swanson personally talked to the employees who reported the claimant, the employer may have had better evidence in August than what the employer presented at the hearing. The facts presented at the hearing do not establish that the claimant committed work-connected misconduct. As of August 18, 2013, the claimant is qualified to receive benefits.

**DECISION:**

The representative's September 13, 2013 determination (reference 01) is reversed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of August 18, 2013, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css