

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAVERE K ADAMS
Claimant

APPEAL NO. 09A-UI-07279-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EMPLOYMENT SERVICES
Employer

**Original Claim: 07/27/08
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Heartland Employment Services LLC (employer) appealed a representative's May 5, 2009 decision (reference 03) that concluded Lavere K. Adams (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for non-disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 5, 2009. The claimant participated in the hearing. Sue Weber, the director of nursing, and Adam Aswegan appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of July 27, 2008. The claimant started working for the employer on September 22, 2008. The employer hired the claimant to work as a part-time LPN. At the time of her separation, the claimant was working full time. The employer evaluated the claimant at the end of her first 90 days and gave her a good evaluation.

During her employment, the claimant received two write-ups before March 22, 2009. On February 13, 2009, the claimant received a written warning for failing to input into the computer a skin tear report. The claimant entered the skin tear report into the computer the next day. Although the claimant notified a power of attorney about a change in medication, the employer concluded she had not done so in a timely manner. On March 12, the employer gave the claimant a written warning for forgetting to add a medication order to the March MARS. The claimant did not realize she needed to do this.

On March 22, a family member complained that the claimant had been rude and indifferent when he had asked about the condition of his father. The employer received information that a CNA had noticed the claimant appeared mad and indifferent that shift. The employer gave the claimant a written warning for appearing rude and indifferent to a family member. The employer's policy requires an employee to be discharged if they receive three written warnings. Even though the claimant denied she had been rude to the family member, the employer discharged her on March 25, 2009.

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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

In accordance with the employer's policy, the employer established business reasons for discharging the claimant. Since neither the complaining person nor a CNA who may have observed the claimant participated in the hearing, the claimant's testimony as to what she did and said to the family member on March 22 must be given more weight than the employer's reliance on unsupported hearsay information from individuals who did not testify at the hearing. A claimant can only be disqualified from receiving benefits based on a current act of work-connected misconduct. 871 IAC 24.32(8). The March 22 complaint does not establish that the claimant committed work-connected misconduct. Therefore, the claimant is qualified to receive benefits as of March 22, 2009.

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

DECISION:

The representative's May 5, 2009 decision (reference 03) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of March 22, 2009, 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 charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw