

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRENT B CAHILL
Claimant

APPEAL NO. 12A-UI-10413-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA VETERANS HOME-MARSHALLTOWN
Employer

OC: 07/29/12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated August 23, 2012, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on August 23, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. Ken Kjer participated in the hearing on behalf of the employer with witnesses Kelley Oetker and Renae Gruetzmacher. Exhibits A and One through Three were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked as a resident treatment worker from April 23, 2012, to August 3, 2012. He was informed and understood that employees were to provide care to residents in accordance with the resident's care plan.

The claimant was working on the overnight shift on July 26 to 27. During the early morning hours on July 27, the claimant was conducting his rounds. One of the residents the claimant was caring for had a care plan that stated that he was to have hip pads on at all times for safety reasons. The claimant discovered the hip pads were wet due to the resident's urinary incontinence. The claimant removed the hip pads to launder them. They then had to air dry. There were no other hip pads in the room. The claimant was unaware that the employer had other hip pads that he could use to replace the pads that were wet. As a result, no hip pads were put back on the resident because they had not dried by the time the claimant's shift was over. There was a nurse in the room when the claimant initially removed the hip pads and on later visits to the resident's room. She never told the claimant that he needed to replace the hip pads on the resident or where the extra hip pads were located. This situation had happened before with this resident, and the claimant did what he had been trained to do in terms of removing and laundering the pads. Later that morning, the resident got out of bed and fell and broke his hip.

The employer discharged the claimant on August 3, 2012, for failing to follow the care plan requirement that the resident was to have hip pads on at all time.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim.

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.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

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, 11 (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. No willful and substantial misconduct has been proven in this case.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim. If the employer becomes a base period employer in a future benefit year, its account may be chargeable for benefits paid to the claimant based on this separation from employment.

DECISION:

The unemployment insurance decision dated August 23, 2012, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw