

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KRISTEN E RIEKEN
Claimant

APPEAL NO: 13A-UI-13515-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 02/03/13
Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

STATEMENT OF THE CASE:

The employer appealed a representative's December 3, 2013 determination (reference 02) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated in the January 3 hearing. Bill Stasek represented the employer. Jalissa Simmons, the administrator, and Heather Read, the director of nursing, testified on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant 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 as a full-time charge nurse in June 2013. During her orientation, the employer showed the claimant how to turn a panic alarm on and off. The claimant knew when a panic alarm sounded during her shift at night. The panic alarm had a higher pitched sound than door alarms.

When the claimant started working, the employer told her about its progressive disciplinary policy. The employer gives employees a verbal warning, a written warning, a final written warning and the fourth written warning results in an employee's discharge.

During her employment, the claimant received a verbal warning on October 10 for failing to follow a documentation standard. On October 23, the claimant received a written warning for leaving a resident unattended on a toilet. On October 23, the employer also gave the claimant her final written warning for leaving the residents in the CCI unit unattended. After the claimant received the final written warning, she understood she could be discharged if something like this happened again.

On October 25, at the end of the claimant's shift, she was giving her report to first-shift employees and the panic alarm went off. As a result of the commotion with shift change, the

claimant initially assumed the sound was from a door alarm. She quickly realized it was a panic alarm. The claimant and the first shift charge nurse answered the panic alarm a CNA had activated.

When the employer learned the claimant did not immediately recognize the panic alarm, the employer decided to discharge the claimant because not recognizing a panic alarm was another safety issue. The employer discharged the claimant on October 27, 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 established businesses reasons for discharging the claimant. The evidence does not establish that the claimant intentionally and substantially disregarded the employer's interests. The claimant did not commit work-connected misconduct. As of October 27, 2013, the claimant is qualified to receive benefits.

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 December 3, 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 October 27, 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 charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css