

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIFFANY A FINK
Claimant

APPEAL NO: 12A-UI-09386-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MOSAIC
Employer

OC: 07/01/12
Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's July 26, 2012 determination (reference 01) 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 hearing with her witnesses, Lou Jean and Ronald Fink. Tom Kuiper, a representative with TALX, appeared on the employer's behalf. Jim Sogard, the human resource manager, testified on the employer's behalf. During the hearing Employer Exhibits One, Two and Three were 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:

Krysilis, Inc. hired the claimant on January 23, 2012, to work full time as a direct care employee. Mosaic (employer) took over on April 1, 2012. When the employer took over, the employer informed the claimant about the employer's rules and policies.

In late April, the claimant was changing a 27-year-old when this individual started falling or slipping off the changing table. The claimant was at the individual's side when she started to fall. The claimant prevented the individual from being injured.

The claimant attended a staff meeting/training session on May 2, 2012. (Employer Exhibits One and Three.) During this meeting/training session, two-person transfer/assists were discussed. The meeting emphasized the importance of using side or guard rails and employees should never walk away from a supported person. (Employer Exhibit Two.)

On June 20, the claimant was changing an individual. The claimant was in a hurry to change this individual and walked about two feet from the changing table to pick up an item she needed for this person. Within a few seconds of the claimant walking a few feet away, the individual fell off the changing table and broke some teeth when she hit the floor. The claimant immediately

called for assistance. The claimant admitted she had not put up the guard rail when she momentarily walked away and should have done so.

The employer suspended the claimant on June 20, 2012. After investigating the incident, the employer discharged the claimant on June 28, 2012 for failing to provide critical care to this individual. The employer concluded the claimant did not provide proper supervision when she left this person unattended without putting up the guard rail.

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 evidence establishes in late April the claimant was not required to have guard rails up because she was at the individual's side changing her. The claimant did not commit work-connected misconduct in late April. On June 20, the claimant did not intentionally violate the employer's policies. The claimant was in a hurry and used poor judgment when she momentarily stepped about two feet from the individual on a changing table and did not put up the guard rails. The evidence indicates this was the first time the claimant had done this. While the claimant may have been negligent on June 20, the facts do not establish this one incident rises to the level of work-connected misconduct.

The employer discharged the claimant for justifiable business reasons, but the claimant did not commit work-connected misconduct. As of July 1, 2012, the claimant is qualified to receive benefits.

DECISION:

The representative's July 26, 2012 determination (reference 01) is affirmed. The employer discharged the claimant for justifiable reasons, but the claimant did not commit work-connected misconduct. As July 1, 2012, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs