

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROBIN M GROSE**  
Claimant

**APPEAL NO. 06A-UI-09656-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WESTMONT CARE CENTER INC**  
Employer

**OC: 09/03/06 R: 01  
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated September 25, 2006, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on October 23, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing. Michael Lanctot participated in the hearing on behalf of the employer. Exhibits One and Two were admitted into evidence at the hearing.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full time for the employer as activity director from August 25, 2003, to September 1, 2006. The administrator, Michael Lanctot, was the claimant's supervisor. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled.

On June 14, 2006, the claimant received a written warning and two-day suspension due to excessive absenteeism. She had been absent on January 9, January 10, January 17 and January 18; February 7, March 3, March 7, and June 2, 2006. In January 2006, the claimant had an eye injury that required surgery and resulted in the loss of sight in one eye. Afterwards, the claimant continued to experience pain in her eye and was prescribed pain medication for the condition. Her absences in January and February were due to her eye injury. The claimant was sick and unable to work on March 3 and 7 and properly notified the employer about her absences. On June 2, the claimant called in after the start of her shift and reported that she would be late for work. She had attended the funeral of a close friend the night before, was up late, and was tired the next day.

On September 1, 2006, the claimant did not report to work as scheduled at 8:30 a.m. or call in to report her absence. She had problems with pain in her eye the evening before and had taken medication that caused her to sleep through her alarm. She woke up at about 9:30 a.m. when

Lanctot called and left a message to find out why she had not reported to work. The claimant reported to work at 9:50 a.m. Lanctot discharged her for excessive absenteeism.

**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.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand 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 to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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 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 or substantial misconduct has been proven in this case. The final incident of tardiness was due to the after-effects of a prescription medication the claimant was taken for eye pain. She did not deliberately oversleep on the day in question.

**DECISION:**

The unemployment insurance decision dated September 25, 2006, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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