

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAURIE J DRAPER
Claimant

APPEAL NO. 12A-UI-06819-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LUTHER CARE SERVICES
Employer

OC: 05/06/12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated June 1, 2012, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on July 3, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. Kari Owen Bahr participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full-time for the employer as a dietary aide from July 2000 to May 3, 2012. Kari Owen Bahr is the dietary supervisor. The claimant was responsible for stocking the staff lounge with clean silverware and had done so for over four years.

On April 24, 2012, the claimant was suspended after the administrator found wet silverware in the staff lounge. She was discharged on May 3, 2012, after the administrative again found wet silverware in the lounge on May 2.

The claimant was following the procedures for washing and drying the silverware before stocking the staff lounge with silverware. She never deliberately stocked silverware that was not clean and dry. She would inspect the silverware to make sure it met sanitary standards before stocking the lounge with silverware.

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).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and the reliability of the evidence and by applying the proper standard and burden of proof. I believe the claimant's testimony that she carefully washed, dried, and inspected silverware before stocking the staff lounge. No willful and substantial misconduct or repeated negligence equaling willful misconduct in culpability has been proven in this case.

DECISION:

The unemployment insurance decision dated June 1, 2012, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw