

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

INGER MCCLELLAN
Claimant

APPEAL NO. 10A-UI-06936-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HOPE HAVEN AREA DEVELOPMENT
Employer

OC: 04/11/10
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated April 30, 2010, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on June 29, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. Cheryl Stevens participated in the hearing on behalf of the employer with witnesses, Dee Ann Fields and Mary Strausbaugh.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as a direct support professional from July 2, 2007, to April 4, 2010. She was informed and understood that under the employer's work rules, workers were required to contact a supervisor if they were not able to work as scheduled and try to find their own replacement. She had been warned about complying with this policy in the past. On March 2, 2010, her supervisor warned her about her absenteeism and tardiness. After receiving this warning she was late on March 4 and 15 and left work early on March 8.

On April 1, 2010, the claimant was providing care to two clients who were prone to seizures and required constant attention. The supervisor of the cleanup crew asked the claimant if she knew where the key was to open the door to get the cleaning supplies. The claimant responded that it should be hanging on the hook where keys were kept. The cleaning supervisor could not find the key and became upset when the claimant would not help her look for it. The claimant did help because of her work duties supervising the clients. The cleanup supervisor reported the claimant treated her rudely, but the claimant was not rude to her.

The claimant had agreed to work for a coworker on April 3, 2010, starting at 9:00 a.m. She was unable to work that morning due to personal problems. She called the home that she was scheduled to work in at 7:00 a.m. and spoke to the nurse. She asked for the phone number of the on-call supervisor and stated that she was going to find a replacement as she was unable to work.

The claimant called the number that she was given for the on-call supervisor three times, but no one answered. She called several coworkers to see if anyone would work for her, but no one agreed to replace her. She called the nurse back to home and let her know that she had been unable to contact the on-call supervisor or find a replacement. She told the nurse that she was unable to work.

The employer suspended the claimant on April 6 and discharged her on April 9, 2010, for absenteeism and tardiness, failing to follow the absence procedures, and failing to communicate positively with coworkers. This was based on her history of attendance problems, her failure to contact a supervisor on April 3, and her conduct toward the cleanup supervisor.

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 section 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 (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 reliability of the evidence and by applying the proper standard and burden of proof. I believe the claimant's testimony that she was not rude to the cleanup supervisor. I also believe the claimant called the home at 7:00 a.m. where she was scheduled to work and made reasonable efforts to contact her supervisor and line up a replacement. No current act of work-connected misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated April 30, 2010, reference 01, is affirmed. 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/pjs