

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICIA M MEADE
Claimant

APPEAL NO: 08A-UI-00411-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CAREAGE OF NEWTON LLC
Employer

**OC: 12/09/07 R: 03
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Patricia M. Meade (claimant) appealed a representative's January 3, 2008 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Careage of Newton LLC (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 28, 2008. The claimant participated in the hearing. Jerry Hynes, the administrator, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in Newton on November 1, 2005. The claimant worked as a full-time charge nurse. Part of the claimant's job duties required her to distribute medication, including narcotics, to residents.

On November 14, 2007, the claimant was arrested for an incident that occurred on April 7, 2007. The claimant was in jail until Friday evening, November 16.

The claimant was scheduled to work on November 15 and possibly November 16 on the 6:00 a.m. to 6:00 p.m. shift. The claimant contacted her mother and asked her to contact the employer to let the employer know that the claimant was unable to work as scheduled these two days. The claimant understood the claimant's mother contacted the employer prior to 6:00 a.m. on November 15. When the claimant's mother called, the employer asked the claimant to call the employer when she was released from jail.

The employer's policy requires an employee to notify the employer two hours prior to a scheduled shift when she is unable to work as scheduled. During her employment, the

employer allowed other people to notify the employer on an employee's behalf that the employee is unable to work as scheduled.

When the claimant was released from jail after 5:00 p.m. on November 16, she did not get home until after 8:00 p.m. The next morning, the claimant learned from her mother that the employer wanted her to call. The claimant contacted the employer around 10:00 a.m. During this conversation, the claimant told the employer she had a meeting with her parole office on Monday, November 19, and would not be able to work until she talked to her parole officer.

The employer tried to find out from a liaison whether the claimant could continue working for the employer after she had been arrested. The claimant had been charged with a drug-related offense. The employer was unable to obtain information from the liaison officers. The claimant and employer had numerous conversations between November 16 and December 7. On December 7, the employer informed the claimant she no longer worked for the employer. The employer discharged the claimant because she violated the employer's policy by failing to properly notify the employer she was unable to work as scheduled on November 15. The employer also told the claimant's mother to have the claimant call the employer in the morning. The employer recalled the claimant called the employer the afternoon after she had been released from jail. The employer also concluded that the claimant could not distribute medications to residents after she had been arrested on a drug-related offense.

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 section 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer asserted the claimant was discharged because she did not work as scheduled on November 15 and 16 and did not properly notify the employer that she was unable to work. Based on the facts presented in this case, the claimant did not intentionally fail to work as scheduled. She did not substantially disregard the employer's interests. Instead the claimant made arrangements for her mother to contact the employer and inform the employer that she, the claimant, was unable to work as scheduled on November 15 and 16. The employer contended the claimant was discharged for violating the employer's attendance policy and for failing to contact the employer Saturday morning. While these reasons establish business

reasons for discharging the claimant, they do not constitute work-connected misconduct in this case.

The employer did not believe the claimant should administer medication to residents after she had been charged with a drug-related offense. The employer did not establish that the claimant was unable to do her job after she had been arrested. The claimant asserted she was able to perform her job as a charge nurse even after she had been arrested. Based on the facts presented during the hearing, the employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of December 9, 2007, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's January 3, 2008 decision (reference 02) is reversed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of December 9, 2007, 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