

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ADELAIDE L MORROW

Claimant

APPEAL NO: 11A-UI-09989-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HILLCREST FAMILY SERVICES

Employer

OC: 06/19/11

Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's July 25, 2011 determination (reference 01) that held the claimant eligible to receive benefits because the claimant's employment separation occurred for nondisqualifying reasons. The claimant participated in the hearing. Shannon Hagensten, the employment coordinator, and Susan McDaniel appeared on the employer's behalf. 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 claimant voluntarily quit her employment for reasons that qualify her to receive benefits, or did the employer discharge her for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The employer hired the claimant on February 8, 2010, to work as a PRN nurse or on-call nurse. The claimant is an LPN. The employer's policy informs on-call employees they are expected to work at least one shift as requested by their supervisor per three-month period to maintain employment.

On June 17, 2010, the employer suspended the claimant until a legal matter that occurred outside the workplace was resolved. On September 9, 2010, the charge against the claimant was dismissed. On September 10, 2010, the claimant informed the employer her legal issue had been resolved and she was ready to work again for the employer. The employer had already made the schedule for the week of September 13, 2010, and did not have any work for the claimant. When the employer did not assign the claimant to any work the week ending September 18, the employer no longer considered her an employee because she had not worked for 90 days. The employer did not inform the claimant she needed to complete another application even though the claimant kept contacting the employer about work.

The claimant established a claim for benefits during the week of September 19, 2011. The employer is one of her base period employers.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if her voluntary quits employment without good cause or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. The claimant did not voluntarily quit her employment. The employer ended her employment by first suspending her and then did not schedule her to work one shift the week of September 13, 2010. Since the employer had not requested the claimant to work a shift for 90 days and interpreted its policy to require an employee to work at least one shift every 90 days, the employer's failure to schedule her to work the week of September 13 resulted her employment ending.

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 had business reasons for suspending the claimant in June 2010 and then ending her employment the week ending September 18, 2010. For unemployment insurance purposes, the employer terminated the employment relationship. Since the legal charges were dropped and the employer did not have the claimant work a shift the week ending September 18, the claimant did not commit work-connected misconduct. As of June 19, 2011, the claimant is qualified to receive benefits.

DECISION:

The representative's July 25, 2011 determination (reference 01) is affirmed. The employer ended the claimant's employment for business reasons, but the claimant did not commit work-connected misconduct. As of June 19, 2011, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css