

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAY M SCHMITZ
Claimant

APPEAL NO: 09A-UI-19542-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HCM INC
Employer

OC: 12/06/09
Claimant: Respondent (2/R)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed a representative's December 21, 2009 decision (reference 01) that concluded the claimant was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. A telephone hearing was held on January 29, 2010. The claimant participated in the hearing. Jeff Wollum, the administrator, Lauri Nolan, an LPN, and Nancy Lunde, the assistant DON, appeared on the employer's behalf.

The claimant asked that a November 19, 2009 doctor's statement be admitted as evidence. Since the employer did not have this document, it was faxed to the employer after the hearing. The employer had until February 5, 2010, to object to the admission of this document into the record. The employer did not send in any objections. As of February 12, 2010, this document is identified as Claimant Exhibit A and is admitted as evidence.

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 on August 5, 2009. She worked as a full time second shift CNA.

On November 18, Nolan was the claimant's supervisor. At about 6:30 or 6:45 p.m., the claimant noticed some spotting. She was concerned because of her pregnancy. Nolan heard the claimant ask if she could put her feet up for a few minutes. Nolan gave the claimant permission to do this. Nolan did not give the claimant permission to go home, but the claimant left work without telling anyone.

When the claimant picked up her child from daycare another nurse's child was sick. The claimant called this nurse who also worked for the employer. While the claimant was on the phone with this nurse, Nolan was trying to find the claimant. Nolan then talked to the claimant and told her she had not been given permission to leave and go home. Nolan told the claimant she needed to come back and finish her shift. The claimant's shift ended at 10:00 p.m.

The claimant came back to work at 7:30 p.m. The claimant approached Nolan at the nurse's station, argued with Nolan and accused Nolan of not caring about the claimant's unborn child. The claimant did not tell Nolan her doctor told her to home and take a bath and put her feet up. The claimant was upset at Nolan. Nolan told the claimant to finish her shift or she would have to write her up for leaving without permission. The claimant left work a second time that night, 7:35 p.m., without telling Nolan she was leaving. The claimant understood that if an employee walked off the job, the employer could discharge the employee.

After the claimant left a second time, she contacted Wollum and told him her side of what happened that night. Wollum indicated he would have to investigate the incident.

Lunde made the decision to discharge the claimant. The employer informed the claimant she was discharged on November 24, 2009. The employer discharged the claimant because she left work without Nolan's permission and left without telling anyone she was leaving. Prior to November 18, the claimant's job was not in jeopardy.

The claimant established a claim for benefits during the week of December 6, 2009. The claimant has filed for and received benefits since December 6.

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. 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 claimant's actions the evening of November 18, 2009, leaving work without permission and then going back to work to argue and accuse Nolan of not caring about her unborn child demonstrates an intentional and substantial disregard of the employer's interests. When the claimant left work the first time, she only had Nolan's permission to put her feet up at work. If the claimant was as concerned about her unborn child as she asserted, it is difficult to understand why she did not call her doctor's office from work instead of leaving to pick up her child. Also, if the claimant really talked to her physician on November 18, this is the first thing she should have or would have told Nolan when she returned. Instead, she said nothing about contacting her doctor and being told to go home. The claimant's credibility about calling her doctor November 18 is not supported by credible evidence. The claimant saw her physician on November 19 and then received a doctor's statement (after the fact) indicating she was unable to work November 18 through 22. (Claimant Exhibit A.) Obtaining a doctor's restriction after the fact does not excuse her November 18 conduct, leaving work without permission or failing to tell anyone she was leaving. Also, contacting Wollum for permission to leave after she has already left work does not change the fact she had already left work without Nolan's permission.

The claimant's November 18 conduct constitutes work-connected misconduct. As of December 6, 2009, the claimant is not qualified to receive benefits.

Since the claimant has received benefits since December 6, the issue of overpayment or whether the claimant is eligible for a waiver of any overpayment will be remanded to the Claims Section.

DECISION:

The representative's December 21, 2009 decision (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of December 6, 2009. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The issue of overpayment or whether the claimant is eligible for waiver of any overpayment is remanded to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs