

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JULIE K TOWNE**  
Claimant

**APPEAL NO. 09A-UI-05297-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CRAWFORD CO MEMORIAL HOSPITAL**  
Employer

**OC: 03/08/09**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated March 25, 2009, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on June 2, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing with her attorney, Michael Tulis. Tara Jepsen participated in the hearing on behalf of the employer with witnesses, Diane Arkfeld and Marcy Larson. Exhibits One through Three were admitted into evidence at the hearing.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full time for the employer as a licensed practical nurse from May 18, 2006, to March 6, 2009. On May 14, 2008, the employer issued a written warning to her for (1) talking to a doctor about whether his nurse was going to get a position in the hospital outpatient clinic and (2) job performance issues. She was warned on December 19, 2008, about treating coworkers and supervisors disrespectfully.

The employer discharged the claimant on March 6, 2009, for two incidents. First, it was reported that the claimant and a licensed practical nurse who worked at the Denision nursing home were discussing a resident of the nursing home who had come to the hospital for treatment for a broken leg. The report alleged that the claimant had threatened to turn the nursing home into the state for abuse of the resident. This was considered a violation of the privacy provisions of the Health Insurance Portability and Accountability Act. Second, the spouse of a patient complained that the claimant had made comments that her husband probably had cancer and would die if his heart stopped.

The two reports were untrue. Concerning the first report, the LPN who was attending class initiated the conversation about the resident with the broken leg but did not identify the resident by name. The only thing the claimant told the LPN was that she had put a cast on the resident's leg. She did not threaten to turn the nursing home into the state. Concerning the second report,

the claimant was instructed by the patient's doctor to encourage the patient and his wife to transfer to the Creighton University hospital in Omaha so he could get specialized treatment for his respiratory condition. The claimant never suggested the patient had cancer or was going to die. The wife overreacted and became overwrought. The claimant was unsuccessful in calming her down.

### **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. The employer's evidence regarding the final two reports that led to the discharge were hearsay. The claimant's testimony was credible and entitled to more weight. No current act of work-connected misconduct has been proven in this case.

### **DECISION:**

The unemployment insurance decision dated March 25, 2009, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs