

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CASEY J JONES
Claimant

APPEAL NO. 10A-UI-01567-SW

**ADMINISTRATIVE LAW JUDGE
DECISION**

FOUNTAIN WEST HEALTH CENTER INC
Employer

OC: 12/27/09
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated January 20, 2010, reference 01, that concluded she was discharged for work-connected misconduct. A hearing was held on March 1, 2010 in Des Moines, Iowa. The parties were properly notified about the hearing. The claimant participated in the hearing. Stacey Hemingway-Perry participated in the hearing on behalf of the employer with a witness, Joyce Giesking. Exhibits One and Two were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for employer as a certified nursing assistant from September 29, 2009, to December 30, 2009. The claimant was informed and understood that under the employer's work rules, insubordination and being unproductive were grounds for discipline.

On December 23, 2009, the claimant was not prepared to work at the start of her shift at 2:00 p.m. as she got something on her uniform top and had to change. She did not start working until 2:25 p.m. There were times during her shift when supervisors were not able to locate her and she was behind in her job duties. She was verbally counseled about this.

On December 28, 2009, the claimant punched in and then left work to pick up a coworker for work. She came back about 25 minutes later. Later in the shift, the charge nurse was not able to find the claimant even though she was paged. A coworker called the cell phone the claimant had to track her down and found out she was in the bathroom for an extended period. She exited the bathroom and went outside. She told the charge nurse that she was dehydrated and needed air. When she came back in, the charge nurse ordered her to clock out and go home because she was sick. The claimant became belligerent and argued with the charge nurse about going home. Finally, the charge nurse had to go on rounds and gave up trying to send her home. Later, the charge nurse discovered that the claimant was in a room outside her

scheduled break talking on a cell phone. The charge nurse reported what had happened to the director of nursing.

The employer discharged the claimant on December 30, 2009, for insubordination and being unproductive.

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 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 claimant's insubordinate conduct and repeated instances of being unavailable to work due to (1) lateness, (2) being unprepared to work at her scheduled start time, and (3) talking on a cell phone when she should have been working were willful and material breaches of the duties and obligations to the employer and substantially disregarded the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated January 20, 2010, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs