

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANDREA VANDERPOOL
Claimant

APPEAL NO. 08A-UI-00473-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

**OC: 12/16/07 R: 03
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated January 7, 2008, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on January 29, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Lynn Corbeil participated in the hearing on behalf of the employer with witnesses, Selena Selsor and Sheryl Robins.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a charge nurse in the employer's nursing home facility from July 11, 2002, to December 13, 2007. The claimant's supervisor was Sheryl Robins, the acting director of nursing. Selena Selsor was the administrator of the facility.

On December 11, 2007, Robins assigned the claimant the task of bathing residents. The claimant performed the work as directed and bathed all the resident, except for two residents who indicated that they did not want to be bathed at that time. Later, Robins approached the claimant and asked her if she had gotten all her work done. The claimant replied in a joking manner, "You know Sheryl Robins, you sound just like my mother." Robins did not take the comments as a joke, but instead viewed it as insubordination, which was not the claimant's intent.

Robins reported to Selsor that the claimant had talked back to her and was insubordinate. Robins had talked to the claimant before about not telling her she sounded like her mother. The claimant had been disciplined for attendance problems and had been counseled for having conflicts with her husband's grandmother who worked in the kitchen during a time period when she and her husband were separated. The conflicts were created by the grandmother, not the claimant, who believed her marital situation was not something to be discussed at work.

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.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand 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 to be deemed misconduct within the meaning of the statute.

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 the reliability of the evidence and by applying the proper standard and burden of proof. Robins admitted that the claimant was trying to be funny when she made the comment to her. The claimant did not refuse to perform any of her job duties on December 11. No current act of willful and substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated January 7, 2008, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw