

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TINA MARIE M ANNICCHIARICO
Claimant

APPEAL NO. 13A-UI-02464-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

POMEROY DEVELOPMENT CORP INC
Employer

OC: 02/03/13
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated February 28, 2013, reference 02, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on March 27, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Tracey Gilleland participated in the hearing on behalf of the employer. Exhibits A, C, D, and E and 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 certified nursing assistant from October 7, 2010, to February 4, 2013. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and were subject to discharge after 12 absences in a 12-month period. Absences on consecutive days due to illness were treated as one absence if the employee supplied a doctor's excuse.

The claimant received a final written warning on October 31, 2012, because she had 10 absence occurrences in 2012. All of the absences were due to illness and were properly reported to the employer. The claimant had doctor's excuses for four of the absence occurrences.

The claimant was absent due to her daughter being an assault victim on January 20, which required a hospital visit. On January 23, there was an appointment with the sheriff's office regarding the assault matter that the claimant attended with her daughter. The claimant properly notify the employer regarding her absences.

On January 28, the claimant was sent home early by the nurse on duty because the claimant exhibited flu symptoms. She called in sick with flu on January 29. She called in properly and

attempted to find her own replacement. She provided a doctor's note excusing her from working.

On February 4, 2013, the employer discharged the claimant because she had reached 13 attendance occurrences.

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 § 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, 11 (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 unemployment insurance rules provide: "Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer." 871 IAC 24.32(7).

The claimant's absences were due to illness or other reasonable grounds and were properly reported. The final absences were supported by a doctor's excuse. While the employer may have been justified in discharging the claimant under its attendance policy, work-connected misconduct as defined by the unemployment insurance law has not been established.

DECISION:

The unemployment insurance decision dated February 28, 2013, reference 02, 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/css