

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

RANDY E CRAWFORD

Claimant,

and

IA DEPT OF HUMAN SVCS/GLENWOOD

Employer.

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HEARING NUMBER: 15B-UI-11825

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-2-A, 96.3-7

DECISION

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

Randy Crawford (Claimant) worked for Glenwood Hospital (Employer) as a full-time direct care worker from August 7, 2006, until he was fired on October 17, 2014. The Claimant's shift started at 10:15 p.m. and ended at 6:15 a.m. The Claimant was approved for intermittent FMLA leave to take care of his wife from time to time. This leave was necessitated by his wife's experiencing intermittent and profound migraine headaches. The Claimant's wife also works for the Employer.

On September 21, 2014, the Claimant properly called in his absence at 7:15 p.m. based on the need to provide care for his wife under previously approved FMLA leave. He did render care for her. She got somewhat better and decided that she was well enough to report to work at 3:00 a.m. for the beginning of her scheduled overtime shift on September 22, 2014. The Claimant was awake at the time his wife left for work and instead of reporting to work with his wife; he stayed home because he believed it was unnecessary to report to work for the final three hours of his shift, since staffing duties had already been

assigned to accommodate his absence. The Employer discharged the Claimant for the stated reason of fraudulent use of sick leave and family medical leave.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) (2015) provides:

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

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

The Division of Job Service defines misconduct at 871 IAC 24.32(1)(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 the 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.

"This is the meaning which has been given the term in other jurisdictions under similar statutes, and we believe it accurately reflects the intent of the legislature." *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d, 445, 448 (Iowa 1979).

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 NW2d 661 (Iowa 2000).

The findings of fact show how we have resolved the disputed factual issues in this case. We have carefully weighed the credibility of the witnesses and the reliability of the evidence. We have found credible the testimony from the Claimant explaining his not coming in to finish the remainder of his shift, or calling in about the remainder of his shift. In particular, we do not conclude that the Claimant was intentionally lying to the Employer about the need for leave in the first place, nor that he was being dishonest in not calling in.

After all, the Claimant knew where his wife worked and would have to be decidedly foolish to try to get away with lying about being home to take care of her when he knew she had gone to work. Now we emphasize he made the wrong judgment about how to handle the situation, no question. But the question isn't whether the Claimant made a poor decision, but whether doing the wrong thing, given his long and spotless tenure, was sufficient to constitute misconduct. It is well-established law that conduct that might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. *Kelly v. Iowa Dept. of Job Service*, 386 N.W.2d 552, 554 (Iowa App. 1986); *Budding v. Iowa Department of Job Service*, 337 N.W.2d 219 (Iowa App. 1983); *Newman v. Iowa Dept. of Job Service*, 351 N.W.2d 806, 808 (Iowa App. 1984). Had Claimant chosen to be dishonest about the need to care for his wife in the first place, we would find misconduct. But under these circumstances, the Claimant was guilty of no more than a good faith error of judgment or discretion in a single isolated circumstance. Further this error occurred when the Claimant quite obviously was exhausted and his judgment impaired. Under the circumstances we find that misconduct was not proven.

DECISION:

The administrative law judge's decision dated December 22, 2014 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was discharged for no disqualifying reason. Accordingly, the Claimant is allowed benefits provided the Claimant is otherwise eligible. The overpayment entered against the Claimant in the amount of \$2,496 is vacated and set aside.

Kim D. Schmett

Ashley R. Koopmans

James M. Strohman

RRA/fnv

DATED AND MAILED _____

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