

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN NEPSHA
Claimant

APPEAL NO: 07A-UI-06023-DW

**ADMINISTRATIVE LAW JUDGE
DECISION**

GENESIS HEALTH SYSTEM
Employer

**OC: 05/27/07 R: 04
Claimant: Appellant (2)**

Section 96.5-2-a -Discharge

STATEMENT OF THE CASE:

John Nepsha (claimant) appealed a representative's June 13, 2007 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Genesis Health System (claimant) would not be charged because the claimant had been discharged for work-connected misconduct. After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held in Davenport on July 31 and a telephone hearing was held on August 21, 2007. The claimant participated in both hearings. Larry Roberson, the human resource director, and Jackie Anholt, the nurse manager, participated in the August 21, 2007 hearing. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in March 2001. The claimant worked as a full-time registered nurse. Anholt was the claimant's supervisor throughout his employment. The employer's disciplinary policy informs employees that after they receive a final written warning in the disciplinary process, the next violation is termination.

The first time the claimant received a corrective action was September 21, 2006. The next time the claimant received corrective action was March 7, 2007. On March 7, the claimant received two final written warnings. The claimant did not agree with the final written warnings, but understood the next violation would result in his termination.

In early March 2007, Anholt talked to the claimant about taking personal time off for appointments instead of calling in sick. The employer never gave the claimant a corrective action for attendance issues. The claimant usually worked the same days and hours and was off on Mondays. As a result of working the same shifts, the claimant did not usually look at his work schedule.

Prior to May 28, the claimant worked six straight days because he agreed to work for or cover for someone else. After working six straight days, the claimant thought he was off work on Monday, May 28, since he usually did not work on Mondays. He did not look at the schedule to see when he was scheduled to work. Since May 28 was a holiday, the claimant was scheduled to work the 3:00 p.m. to 11:00 p.m. shift. The claimant did not report to work on May 28 for his scheduled shift.

The employer discharged the claimant because he violated the employer's policy by failing to report to work or notify the employer he was unable to work on May 28 and was on a final written warning. If the claimant had not been on a final written warning, the employer would not have discharged him for the May 28 attendance issue.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. 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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

Since the claimant was on his final written warning, the employer established justifiable business reasons for discharging him. The facts do not, however, establish that he committed a current act of work-connected misconduct. The claimant was a very conscientious employee and did not have an attendance problem to the extent that he reported to work late or not at all without contacting the employer. The claimant used poor judgment and exhibited a bad habit when he did not regularly check his work schedule. The claimant's testimony is credible in that he did not know he was scheduled to work on Memorial Day, since he usually did not work Mondays. The facts do not establish that the claimant intentionally failed to work as scheduled. He did not commit work-connected misconduct. As of May 27, 2007, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's June 13, 2007 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of May 27, 2007, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs