

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LISA HAWK
Claimant

APPEAL NO: 09A-UI-02444-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GREAT RIVER MEDICAL CENTER
Employer

OC: 01/11/09
Claimant: Appellant (1)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Lisa Hawk (claimant) appealed an unemployment insurance decision dated February 6, 2009, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Great River Medical Center (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 11, 2009. The claimant participated in the hearing. The employer participated through Betty Yore, Director of Heart and Vascular Unit; Christy Ford, Human Resources Generalist; and Donna Wirt, Heart and Vascular Supervisor. 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:

The issue is whether the employer discharged the claimant for work-related misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time nurse specialist from January 31, 2005 through January 9, 2009 when she was discharged. She had previously taken leave under the Family Medical Leave Act (FMLA) so was familiar with the process. The claimant had access to the employer's attendance policy which clearly states that absences under FMLA are not held against the employee. She had a chronic pain problem and the employer had counseled her several times as it appeared the claimant was drugged. Betty Yore, Director of the Heart Vascular Unit and Donna Wirt, Heart and Vascular Supervisor met with the claimant in October 2008 to recommend she take FMLA to take care of her medical problems. The claimant declined to take FMLA.

On December 4, 2008 she requested to take vacation on December 5, 2008 for an elective surgery. The claimant's request was not timely and too many other employees had requested time off that day so her request was denied. Since December 2008 was a busy month, the employer suggested she schedule the surgery in January 2009.

The claimant fell asleep on January 6, 2009 during a peripheral intervention case when she was functioning as the nurse taking care of the patient. She fell asleep while standing and the doctor performing the procedure along with two staff members witnessed it. The claimant was responsible for primary care of the patient including monitoring vital signs, monitoring responses to the procedure, administering medication (including IV conscious sedation) and monitoring responses to the sedation. The patient did receive sedation medication during the procedure. The doctor informed the director and the claimant's supervisor who later observed the claimant to be appropriate so no action was taken at that time.

On the following day, the claimant fell asleep while documenting a diagnostic heart catheterization that progressed into a coronary intervention. She was sitting down during this procedure and the physician performing the procedure witnessed it. Her responsibility in this procedure was to monitor the patient's vital signs, monitor the EKG, document all actions taken by the team and document all supplies used.

The claimant's actions placed the patients in direct harm but also placed her co-workers, the physicians and the organization at risk. She was discharged on January 9, 2009.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

Iowa Code § 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 claimant was discharged for repeated negligence. Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. Henry v Iowa Department of Job Service, 391 N.W.2d 731 (Iowa App. 1986). To punish an employee for falling asleep due to medication would be inherently unfair as the action would not be volitional. However, when the employee refuses to take time off work to resolve her medical problems, her actions become intentional.

The employer had noticed the claimant was having problems with medication as far back as October 2008 and recommended she take FMLA but she refused. The claimant denies FMLA was offered but also contends she did not want to take FMLA because her job was in jeopardy due to attendance. Her explanation is not credible since she is familiar with FMLA due to taking it before and because taking FMLA would have actually preserved her job. She had access to the employer's attendance policy which provides that absences under FMLA are excused. By knowingly going to work under heavy medication, the claimant's actions were intentionally negligent. The claimant's actions show a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated February 6, 2009, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css