

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DELLANA D WRIGHT
Claimant

APPEAL NO. 09A-UI-18055-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JENNIE EDMUNDSON
MEMORIAL HOSPITAL
Employer

Original Claim: 11/01/09
Claimant: Appellant (2)

Section 96.5-2 a - Discharge

STATEMENT OF THE CASE:

The claimant appealed a representative's November 25, 2009 decision (reference 01) that disqualified her from receiving benefits, and held the employer's account exempt from charge because the claimant had been discharged for disqualifying reasons. A telephone hearing was held on December 21, 2009. The claimant participated in the hearing. Kathy Heuwinkel, an employee benefits specialist, and Julie Donnelly, the director of the emergency room, participated in the 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 on April 23, 1990. The claimant worked as a part-time registered nurse in the emergency room. Donnelly became the director of the emergency room on August 17, 2009. She supervised the claimant. The employer's progressive disciplinary policy informs employees that after receiving a suspension, the next warning for a similar problem results in an employee's discharge.

The claimant received a written warning on November 26, 2008 for failing to timely give a patient prescribed medication. On January 3, 2009, the claimant did not follow a physician's written orders within a reasonable time. The employer noted the claimant should be transferred to another department where her skills could be better utilized. The claimant understood the importance of timely implementing a physician's orders in the emergency room. At times, the claimant asked other employees to review a patient's paperwork to make sure she had not missed anything.

Before Donnelly became the director of the emergency room, the claimant received a three-day suspension for an August 1, 2009 incident. The claimant's notes on a patient indicate when an

IV for fluids had been completed, but not when the fluids had been started. The employer also concluded the claimant did not administer prescribed medication in a timely manner. The employer concluded the claimant was not prioritizing critical care needs and encouraged her to transfer to another department where her caring skills would be better appreciated. After Donnelly became the director, she had the claimant attend a critical care class on October 21, 2009.

On October 24, the employer was short staffed on the shift the claimant worked. As a result of being short-staffed, the claimant was extremely busy during her shift. After the claimant worked her shift, a charge nurse reported that the claimant failed to tell her about temperature of a patient who came in vomiting and with abdominal pain. Although the chart indicated the patient had an earlier temperature, the patient had not received any Tylenol. While the patient received an initial assessment, the claimant had not completed a head-to-toe assessment the employer required her to do. Also, the chart indicated the patient had received a second bag of saline, but the claimant had not hung the second bag when the new nurse came on duty. Although the claimant told the charge nurse she would hang the saline bag, the nurse who came on duty told the claimant she would do it but made it apparent she did not like the fact the claimant charted she had hung a second saline bag when she had not.

Donnelly learned about the October 24 incident on Monday, October 26. Donnelly talked to the claimant about the report. The claimant told Donnelly she forgot to hang the second bag of saline because she had been very busy on Saturday. The claimant did not give the patient Tylenol for a fever because the patient did not initially feel warm. After the first bag of saline was done, the claimant was going to take the patient's temperature but had to leave the patient's room to get a temperature probe. When the claimant left, she was asked to do something else and did not get back to take the patient's temperature. In the claimant's opinion, Tylenol was not necessary after the patient received the saline and the medication the physician had ordered, because the patient felt better.

On October 29, 2009, the employer discharged the claimant for not giving the October 24 patient Tylenol for a fever and for not starting a second bag of fluid that she recorded she had done. The employer concluded the claimant again failed to follow the employer's emergency room policies and procedures.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 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).

The employer established justifiable business reasons for discharging the claimant. Although the claimant did not follow all the employer's policies or procedures on October 24, the facts do not establish that she intentionally failed to follow the employer's procedures. The evidence indicates the claimant worked to the best of her ability in the emergency room when the employer was short-staffed on October 24. The claimant did not commit work-connected misconduct. Therefore, as of November 1, 2009, the claimant is qualified to receive benefits.

DECISION:

The representative's November 25, 2009 decision (reference 01) is reversed. The employer discharged the claimant for justifiable business reasons, but the claimant did not commit work-connected misconduct. Therefore, as of November 1, 2009, the claimant is qualified to receive benefits, provided she 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/kjw