

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANNA M GAUL
Claimant

APPEAL NO. 12A-UI-03817-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA
Employer

OC: 03/04/12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated April 4, 2012, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on April 30, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. Mary Eggenburg participated in the hearing on behalf of the employer with witnesses Ray Haas and Deborah Steinbaker. Exhibit One was admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked 36 hours per week as a medical assistant from October 31, 2011, to March 7, 2012. The claimant was informed and understood that under the employer's work rules, employees were entitled to sick leave for a medical disability and that misuse of sick leave was grounds for discipline. Sick leave credits are to be used at the rate of one hour for each hour of absence, and routine medical or dental appointments were not to exceed two hours of absence.

The claimant was sick and unable to work on February 23. She called in and properly notified the employer that she was unable to work that day due to illness and was going to see a doctor. She called the doctor's office to arrange an appointment. A short time later, she received a call from another employer, a pediatrics clinic. She had applied for work with that clinic, and the clinic representative asked if she could come in to talk about a job. The claimant told the clinic representative that she was off work that day and was coming to the hospital for a doctor's appointment. The clinic is in the same medical complex as her appointment. She told them that she could stop by after her appointment.

The claimant went to her doctor's appointment and was diagnosed with a sinus infection and was given a prescription for antibiotics. After the appointment, she stopped by the pediatrics clinic. She spoke with a clinic representative who told her about the job and said she was a

good candidate. She told the clinic employee she was not interested in pediatrics and had a job she enjoyed. The interview took about 20 minutes. The claimant went home and stayed there the rest of the day.

When the claimant recorded her time, she reported eight hours of sick leave for February 23. She did so because she was sick and unable to work the whole day. She did not take off work for the purpose of going to a doctor's appointment; her absence was due to her medical disability that day.

When the employer discovered that the claimant had went to a job interview and had reported eight hours of sick leave for February 23, she was discharged on March 7, 2012, for misuse of sick leave. The employer believed the claimant should not have gone to a job interview after calling in sick and should have used vacation pay to cover the time spent in the interview.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim.

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).

No willful and substantial misconduct has been proven in this case. The claimant was sick and unable to work on February 23. Her medical disability for the day is what justified her receiving sick pay for the day. It would have been prudent for the claimant to have told the pediatrics clinic that it was not a good time for her to stop by because she was sick or told the person on the phone that she was not interested in changing jobs. She also could have spoken to her supervisor and asked for guidance on reporting her time, but this would at most be a good-faith error, not disqualifying misconduct.

DECISION:

The unemployment insurance decision dated April 4, 2012, reference 01, is reversed. 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/kjw