

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICIA A DIETL
Claimant

APPEAL NO. 13A-UI-07426-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BIOLIFE PLASMA LLC
Employer

OC: 06/02/13
Claimant: Appellant (2-R)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated June 19, 2013, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on August 22, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing her representative, Benjamin Roth, and a witness, Rick Dietl. Tom Kuiper participated in the hearing on behalf of the employer with witnesses, Andrew Houts. Exhibits One and Two were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a receptionist from August 3, 2009, to April 26, 2013. She was informed and understood that under the employer's work rules, she could be disciplined for using threatening language toward employees.

The claimant was hospitalized due to mental health issues from April 29 through May 1, 2013. As part of the evaluation process to determine if the claimant was a danger to herself or others, one of the medical staff questioned her repeatedly about whether she wanted to hurt anyone. She had been given medication to calm her down, which clouded her thinking. When the person asked her if she had ever thought of hurting anyone, she said that she guessed so. When asked who, the claimant said her boss.

On May 1, a social worker with the hospital informed the employer that the claimant had made a homicidal statement toward her supervisor and that she would never do it but had thoughts. The claimant was on leave after being released from the hospital.

The employer discharged the claimant on May 17, 2013, for making a threat toward her supervisor.

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).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant's husband was present when the claimant was questioned and credibly testified that the claimant had when repeatedly questioned while medicated said that she guessed that she thought about hurting her boss. This disclosure of the thoughts she had in her head falls short of using threatening language toward an employer.

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. No willful and substantial misconduct has been proven in this case.

The claimant had taken leave at the time of her discharge. This raises an issue of whether the claimant was able to and available for work at the time of the claim for unemployment insurance benefits, which was not an issue for the hearing. The matter is remanded to the Agency for a decision.

DECISION:

The unemployment insurance decision dated June 19, 2013, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible. The issue of whether the claimant is able to and available for work is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs