

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALYSE L MORRIS
Claimant

APPEAL NO. 08A-UI-11701-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BEBT PC
Employer

OC: 11/02/08 R: 03
Claimant: Respondent (1)

Section 96.5-2- a- Discharge

STATEMENT OF THE CASE:

Bebt PC (employer) appealed a representative's December 4, 2008 decision (reference 01) that concluded Alyse L. Morris (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 30, 2008. The claimant participated in the hearing. The employer failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which the employer's representative/witness could be contacted to participate in the hearing. As a result, no one represented the employer. Based on the evidence, the arguments of the claimant, 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 May 5, 2008. The claimant worked as a full-time receptionist. The office manager supervised the claimant.

Before her employment separation, the employer's business was slowing down. Prior to November 7, 2008, the employer had not talked to the claimant about problems with her work. On November 7, the employer informed the claimant she was discharged because the employer received complaints about her performance. The employer also indicated that one employee indicated the claimant may have on October 22 reported to work intoxicated. The claimant denied that she ever reported to work intoxicated. On October 22, the claimant had bronchitis, but reported to work. The claimant gave the employer a doctor's note for days she was absent for an illness. The employer has not hired a new employee to replace the claimant.

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 may have had business reasons for discharging the claimant. The evidence presented during the hearing does not establish that the claimant committed work-connected misconduct. Therefore, as of November 2, 2008, the claimant is qualified to receive benefits.

DECISION:

The representative's December 4, 2008 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of November 2, 2008, 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/css