

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HOLLY M HESSLING
Claimant

APPEAL NO: 12A-UI-06865-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SANIT INC
Employer

OC: 05/13/12
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's June 5, 2012 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated in the hearing. Jordan Meisenburg, a former co-worker, appeared on the claimant's behalf. Zoro Salin, the owner, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

In October 2011, the claimant started working for the employer as a part time server. When the claimant started, she was available to close the restaurant. In April 2012, the claimant's daycare changed the hours it was open from 10:00 p.m. to 8:30 p.m. When the daycare closed at 10:00 p.m., the claimant could work later and close the restaurant. As of April 16, 2012, the claimant changed her availability to work because of daycare's change in hours. The employer counted on the claimant closing the restaurant.

The employer's policy informs employees they can only take smoke breaks at specific times. The claimant and other employees took smoke breaks outside of the designated times. After the employer noticed employees, including the claimant, abusing the smoking policy, the employer informed the claimant and other employees the smoking policy would be strictly enforced. After the employer started to strictly enforce the smoking policy, the employer did not talk to the claimant again about violating this policy.

The employer told the claimant on May 14, 2012, she was discharged because she changed the hours she was available to work. This was the only reason the employer gave the claimant for discharging her. The employer also believed the claimant wanted to be discharged so she could receive unemployment insurance benefits.

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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The employer had justifiable business reasons for discharging the claimant. The evidence does not establish that the claimant committed work-connected misconduct. Unfortunately, the claimant's availability changed when her daycare provider changed the hours it closed from 10:00 p.m. to 8:30 p.m. The change in the claimant's availability to work may have created scheduling problems for the employer, but a change in availability does not constitute work-connected misconduct.

The claimant and other employees violated the employer's smoking policy. When these violations became a problem, the employer talked to the claimant and other employees. The employer then started strictly enforcing the smoking policy. The claimant did not violate the policy after the employer talked to her and strictly enforced the policy.

Even though the employer concluded the claimant wanted to be discharged so she could receive unemployment insurance benefits, the claimant made more money working. The claimant's witness disputed that the claimant refused to timely wait on and serve customers.

Since the claimant did not commit work-connected misconduct, as of May 13, 2012, she is qualified to receive benefits.

DECISION:

The representative's June 5, 2012 determination (reference 01) is reversed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of May 13, 2012, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css