

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JANICE M LOVETINSKY**  
Claimant

**APPEAL NO. 14A-UI-02005-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAVERLY HEALTH CENTER**  
Employer

**OC: 01/26/14  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated February 13, 2014, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on March 13, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing with her representative, Benjamin Hamel. Abby Miller participated in the hearing on behalf of the employer with witnesses, Joanne Nathem, Amy VanDonsel, and Krista Behrends. Exhibit One was admitted into evidence.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full time for the employer as a respiratory therapist supervisor from April 9, 2012, to January 27, 2014. The claimant's supervisor was Carol Duffy. The claimant was never disciplined while she worked for the employer and received a favorable performance evaluation.

The employer discharged the claimant on January 27, 2014, after receiving complaints from employees under her supervision about her management style. The employer decided that there was a lack of confidence and trust in the claimant as a supervisor based on the reasons listed below.

The claimant had employees account for their activities during the day by filling out productivity sheets, which were posted in the department. Employees complained that this was micromanagement and they thought they were being ranked. Employees complained that the claimant required them to highlight their signature on a document used in the charging process that they felt was unnecessary. Employees complained that the claimant's strictness did not allow them to think outside the box.

The claimant had developed the productivity sheets in consultation with her staff to rebut Duffy's contention that they were overstaffed. The staff had complained that the sheets were complicated, and the claimant was trying to figure out ways to simplify the sheets.

Employees complained that they were not allowed to take breaks together. They complained that the claimant had targeted one employee, Tina Beckert. The claimant did not target Beckert but instead disciplined her appropriately for performance issues.

The claimant staggered employees lunch breaks based on Duffy's advice to make sure that they had uninterrupted 30-minute lunch breaks. This was after a management meeting where the topic of making sure employees got their full breaks was discussed.

The employer was establishing a pulmonary rehabilitation program. The claimant was supposed to select one respiratory therapist to specialize in that area. Employees reported that the claimant had said that the respiratory therapist, Behrends, who was picked for this assignment, was chosen because she was easily manipulated. The claimant also told the nurse manager, Joanne Nathem, that Duffy had chosen Behrends for the position, which Duffy denied. Nathem believed Duffy and considered the claimant's statements untruthful.

The claimant considered both Behrends and the other respiratory therapist, Amy VanDonsel, who had expressed interest in working in the pulmonary rehabilitation program, were excellent candidates for the position. She went to Duffy for advice. Duffy told her that she would rather have Behrends in the job because she would be easier for cardiac rehab staff to work with. The claimant never said that Behrends was easily manipulated as was alleged.

The claimant had received complaints from the respiratory therapists about Duffy's harsh treatment of them. The claimant conveyed their complaints and her own complaints about Duffy to human resources in December 2013, which led to an investigation and interviews of staff. Before the interviews, the claimant had told the respiratory therapists that she hoped they would back her. The employer considered this to be prepping the therapists about what to say. After the claimant complained about Duffy, Duffy had told her that she would be the one to leave not Duffy.

#### **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. Iowa Code § 96.6-2; 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 findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof.

The claimant testified in detail and was consistent. Her testimony rebutted the employer's evidence about the reasons for the termination. Her testimony was very believable. The employer's major allegations were the claimant being untruthful about who picked Behrends to work in the pulmonary rehab position. This involves deciding whether to believe the claimant or Carol Duffy, who was not at the hearing to testify under oath and subject to cross-examination. The claimant established a motivation for Duffy to be untruthful in matters involving the claimant since she had told the claimant that the claimant would be leaving not her. The preponderance of the evidence established that Duffy did recommend that Behrends be given the position in the pulmonary rehabilitation program because she was easy to work with not easily manipulated. The claimant therefore did not lie about this as the employer alleged. The fact that the claimant was strict or required employees to account for their activities does not prove willful and substantial misconduct. The claimant did stagger the employee's breaks, but this was based on concerns about complying with wage and hours rules. Finally, the evidence establishes that Beckert was not arbitrarily targeted by the claimant, but instead the claimant was trying to correct Beckert's work performance issues as instructed by her supervisors.

While the employer may have felt justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established.

**DECISION:**

The unemployment insurance decision dated February 13, 2014, reference 01, is affirmed. 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/pjs