

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**TIFFANY D FINN
1028 N PINE ST
DAVENPORT IA 52804**

**IOWA MASONIC NURSING HOME
TRUSTEES OF THE GRAND
CHARITY FUND
2500 GRANT ST
BETTENDORF IA 52722**

**Appeal Number: 04A-UI-12569-DWT
OC: 10/31/04 R: 04
Claimant: Respondent (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Iowa Masonic Nursing Home (employer) appealed a representative's November 19, 2004 decision (reference 01) that concluded Tiffany D. Finn (claimant) was qualified to receive unemployment insurance 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 15, 2004. The claimant participated in the hearing. Bonne Haack, John Hippler and Marilyn Spangler, the administrator, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, 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 reasons amounting to work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on October 23, 2003. The claimant worked as a full-time certified nurse's aide. The claimant received a copy of the employer's attendance policy. The employer's policy required an employee to notify the employer two hours before a scheduled shift when the employee was unable to work as scheduled. When an employee is excessively absent from work, the employer has discretion to discipline an employee and consider all absences even if the employer initially excused an absence.

The employer gave the claimant a written warning for excessive absenteeism on February 25, 2004. On June 14, 2004, the employer gave the claimant her second written warning for excessive absenteeism. The June warning informed the claimant she could be discharged if she had any more unexcused absences. The employer considers an absence excused when an employee provides a doctor's statement verifying the employee is unable to work for medical reasons.

The claimant was absent from work on August 15. The claimant called in about ten minutes before her shift to report she was unable to work as scheduled because she had fallen down her stairs and hurt her back. The claimant notified the employer she was unable to work on August 17 because she had hurt herself when she fell down some stairs. The claimant gave the employer a doctor's excuse verifying she had been unable to work on August 17, 2004. The claimant did not work on September 27 as scheduled because she had a sick child whose illness was verified by a doctor's statement. The claimant notified the employer she was ill and was unable to work as schedule on October 10 and 11. The claimant gave the employer 45 minutes notice that she was unable to work on October 11, 2004. The employer excused these absences because she had a doctor's statement verifying she was ill and unable to work.

On October 24, 2004, the claimant contacted the employer at 5:40 a.m. to report she had fallen down her stairs and was unable to work because she had bruised her shin and was unable to walk. The claimant was scheduled to work at 6:00 a.m. The claimant saw her doctor on October 24, 2004, and obtained a doctor's note verifying the claimant could not work October 24 and 25, 2004.

The employer gave the claimant her third written warning on October 26, 2004, for violating the employer's attendance policy by failing to properly notify the employer she was unable to work as scheduled and for being excessively absent from work. The employer discharged the claimant on October 26, 2004 for excessive absenteeism. The claimant's failure to work as scheduled not only jeopardized the care of the residents who stayed at the employer's facility but also created morale problems because the claimant's co-workers complained about her repeated absences.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges 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 law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

The employer established compelling business reasons for discharging the claimant. Based on the employer's attendance policy and the claimant's repeated absences, the claimant was not a dependable employee and created repeated staffing problems and concerns for the employer. The facts, however, establish that the claimant's current absences were beyond her control. Even though she did not inform the employer by 4:00 a.m. on October 24 that she was unable to work, the claimant notified the employer as soon as she realized she was unable to work after she hurt herself while getting ready for work. The claimant's doctor confirmed the claimant was unable to work the days she did not report to work in October. Even though the employer had doubts about the claimant's ability to work on October 24 and 25, the employer did not have evidence to contradict the doctor's statement.

The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of October 31, 2004, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's November 19, 2004 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute a current act of work-connected misconduct. As of October 31, 2004, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefit paid to the claimant.

dlw/b