

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

PEGGY K TEWES
Claimant

APPEAL NO. 14A-UI-05500-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SIGNATURE PROPERTIES OF PRIMGHAR
Employer

OC: 04/27/14
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated May 21, 2014, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on June 18, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Tammy Cronk participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for Signature Properties as a certified nursing assistant in October 2012. She initially worked at the employer's facility (Sutherland Care Center) in Sutherland, Iowa, but later she worked at both there and at the employer's facility (Primghar Rehab and Care Center) in Primghar, Iowa. She transferred to work solely at Primghar Rehab and Care Center from March 21, to April 30, 2014. The claimant was counseled by Tammy Cronk, the director of nursing on April 1 about improving her attitude after receiving complaints that she was injecting into other employee's conversations.

During the weekend of April 26 and 27, Cronk received additional complaints about the claimant's rude attitude for which the claimant was discharged on April 30.

Another CNA, Joanibie Konz, had reported the claimant was rude to her, mocked her, and made her cry. In fact, the claimant tried to be helpful to Konz, who was working on an unfamiliar shift. At one point, the claimant had offered to help Konz with getting a resident up. Konz declined the offer. Later, the claimant reported Konz to the nurse on duty for not getting the resident up. She never mocked Konz or did anything to make her cry.

It was reported that the claimant had a conflict with a cook, Richard Dryden. In fact, Dryden was asking the claimant to talk louder in the dining room. The claimant was concerned that others would claim she was yelling so she told Dryden she was not going to raise her voice

because the DON had told her to watch her tone. When Dryden called the claimant a butt, the claimant replied that a butt was a body part and she was not a butt. The nurse on duty told them to stop talking.

At one point over the weekend, a resident had told the claimant another resident needed some help. The claimant was in a hurry and replied to the resident that she knew her job and he was just a resident. The claimant did help the resident in question.

The claimant overheard Linda Towe, a housekeeper and CNA talking to several residents about her child being very sick. The claimant remarked that if her daughter was sick, maybe she should take her daughter to the clinic. Towe reported the claimant was rude, but the claimant was trying to be helpful. Also, when Towe was cleaning up some water that had gotten on the carpet outside the shower area, the claimant remarked that it was just water and not to worry about it. Towe reported this as a rude comment also.

Other employees reported the claimant was laughing inappropriately. There were times when the claimant would laugh as a coping mechanism or to keep her spirits up.

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. None of the employer's evidence was from a person who had personal knowledge of what happened over the weekend. The claimant testified credibly and her testimony is entitled to greater weight.

Work-connected misconduct as defined by the unemployment insurance law has not been established. No current act of willful and substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated May 21, 2014, reference 01, is reversed. 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