

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ELIZABETH A STRAH
Claimant

APPEAL NO. 08A-UI-06936-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CENTER VILLAGE INC
Employer

**OC: 06/29/08 R: 03
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated July 22, 2008, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on August 12, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing with her attorney, Gayla Harrison. Kathy Newman participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a certified nursing assistant from September 4, 2003, to June 25, 2008. The claimant was discharged based on a direct care worker inquiry disclosed the claimant was not eligible to work as a direct care worker in the employer's residential care facility.

The claimant was not discharged for any conduct that occurred while she was employed by the employer. The determination that she was ineligible for employment was based on something that happened before September 4, 2003, which was the claimant disclosed to the administrator when she was hired.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides for a disqualification for claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code sections 96.5-1 and 96.5-2-a.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code section 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. 871 IAC 24.32(1). In addition, 871 IAC 24.32(8) states that a discharge for misconduct cannot be based on past acts but must be based on a current act.

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. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. No current act of work-connected misconduct has been proven.

DECISION:

The unemployment insurance decision dated July 22, 2008, 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/css