

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RACHAEL M AGUIRRE**

Claimant

**APPEAL NO. 11A-UI-09657-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GOOD SAMARITAN SOCIETY INC**

Employer

**OC: 06/19/11**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated July 12, 2011, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on August 16, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. Darla Vang participated in the hearing on behalf of the employer with a witness, Esther Perkins. Exhibits One through Five were admitted into evidence at the hearing.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked part time as a housekeeping assistant for the employer from April 12, 2010, to June 2, 2011. The claimant was informed and understood that under the employer's work rules, employees were required to notify their manager and were to try and find their own replacement if they were not able to work as scheduled. The rules provide that employees were subject to termination after an absence of two or more days without notifying a supervisor. The claimant had received a written warning for excessive absences on January 3, 2011, because she had seven absences from May through December 2010.

The claimant was sick and unable to work on May 31, 2011. She notified the employer that she was unable to work due to illness and provided a doctor's excuse. She later was diagnosed with pneumonia.

The claimant was scheduled to work on June 4, 2011, but she was absent from work due to illness. She tried calling her supervisor at the supervisor's home number before the start of her shift, but she could not reach her. She ended up going back to bed. When her supervisor called her later that morning, she told her supervisor that she was sick and was going to go the doctor later that day. Her supervisor questioned why she had not gone to the doctor on June 3 if she was so sick. Her supervisor told the claimant that she had been given warnings and enough chances and she was done.

The claimant understood from her supervisor's comments that she was discharged. She still went to the doctor and had her son bring in her work excuse for June 4 and 5, but that was done to show her supervisor that she was sick.

When the claimant did not report to work on June 9 and 10, the administrator sent her a letter informing that due to her no-call/no-show days, she considered the claimant to have resigned.

#### **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. 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 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 of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I believe the claimant's testimony that her supervisor told her that she had been given warnings and chances and was done. She reasonably believed she was discharged. She did not voluntarily quit employment. The claimant was absent due to legitimate medical reasons verified by a medical excuse. She tried calling her supervisor and then returned to bed because she was seriously ill. Willful misconduct has not been proven in this case.

**DECISION:**

The unemployment insurance decision dated July 12, 2011, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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