

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LINDSAY A MINNER
Claimant

APPEAL NO: 14A-UI-11648-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SCOTTISH RITE PARK INC
Employer

**OC: 10/29/14
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's November 7, 2014 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because she had been discharged for nondisqualifying reasons. The claimant participated at the December 2 hearing with her attorney, Nicolaus Shaull. Teresa Phillips, the director of human resources, and Kim Gahan, the chief nursing officer, appeared on the employer's behalf.

During the hearing, Claimant Exhibits A through I were offered and admitted. Claimant Exhibits J and K were offered, but ruling was reserved on the admissibility of these exhibits. After carefully considering this matter, Claimant Exhibits J and K are not admitted. These documents are not admitted because they do not establish when the claimant was ultimately released from work and the claimant did not present these to the employer. For this hearing, these documents are not relevant.

Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in September 2012. She worked as a full-time registered nurse. The last day the claimant worked was July 21, 2014. She requested and received FMLA because she was having surgery. (Claimant Exhibit G.) The claimant's FMLA ended on October 14, 2014.

In addition to receiving FMLA, the claimant also applied on July 22 for short-term disability benefits through the employer. The claimant learned she was eligible to receive short-term disability benefits as of August 5, 2014. (Claimant Exhibit B.) The claimant and employer received notification that her short-term disability benefits had been extended to September 2, 2014, the date her physician initially planned to release her to work. (Claimant Exhibits C

and D.) The claimant and employer then received a September 4 letter informing them the claimant's doctor had released her to work on September 6, 2014. (Claimant Exhibit E.) The claimant talked to the employer on September 5 and told the employer she was unable to work because of the pain she was experiencing. On September 11, the claimant called and left a message that she may be released to return to work in three to four weeks.

The claimant was not released to return to work on October 14, the day her FMLA ended. The claimant had no understanding she was required to regularly update the employer about when she could return to work. The claimant knew the employer received the same short-term disability letters that she received. Since the claimant had not been released to return to work as of October 14, the employer mailed her a letter the evening of October 14 informing her that she no longer had a job but could apply for another position when she was released to return to work. (Claimant Exhibit A.)

An October 15 letter informed the claimant and employer that her short-term disability benefits were approved through October 27, 2014. (Claimant Exhibit F.) The claimant called the employer on October 20 to let them know she would be released to work in a week so she could be scheduled to work. The employer then realized the claimant had not received the October 14 termination letter that told her she was no longer an employee. The employer also realized on October 20 that the claimant incorrectly concluded her FMLA did not end for another two weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her 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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established business reasons for ending the claimant's employment. The employer acknowledged the claimant was discharged because she had not been released to work on October 14 when her FMLA ended. The claimant did not commit work-connected misconduct. The law specifically states that unsatisfactory performance as a result of inability

incapacity does not amount to work-connected misconduct. As of October 19, 2014, the claimant is qualified to receive benefits based on the reasons for her employment separation.

(Since the claimant was not released to return to work until October 27, she is not eligible to receive benefits until the week of October 26, 2014.)

DECISION:

The representative's November 7, 2014 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons; the claimant did not commit work-connected misconduct. Based on the reasons for her employment separation, the claimant is qualified to receive benefits as of October 19, 2014, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css