

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TARA A HOWELL
Claimant

APPEAL NO: 11A-UI-11821-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FIVE STAR QUALITY CARE INC
Employer

**OC: 07/31/11
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's August 29, 2011 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated in the hearing. Ted Powell, the administrator, and Lori Piziali, the director of nursing, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant 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 April 2010. The employer hired her to work full time as the MDS skilled care nurse. Piziali supervised the claimant. When the MDS full-time long-term care nurse quit in December 2010, the employer asked the claimant to do both jobs, long term care and skilled nursing MDS job duties. Both jobs were too much for the claimant to do by herself. The employer finally agreed the claimant could train the assistant director of nursing to help the claimant with these job duties.

On July 15, 2011, the employer gave the claimant a performance improvement plan because she had not timely completed some quarterly risk assessments, she had not provided a nurse with completed MDSs to sign, validation reports had not been run weekly and she failed to timely submit MDSs. The employer also gave the claimant a written warning on July 15 for the same issues addressed in the performance improvement plan. The employer identified the July 15 written warning as the final written warning.

The employer discharged the claimant on August 5 after the claimant failed to satisfactorily perform her duties while on her performance improvement plan. The claimant made a mistake when counting the days she needed to submit a MDS report for a resident who had been in and out of the employer's facility in July. When the claimant counted the date she needed to submit the MDS report to the Federal government she believed the date was July 28. Instead, the

claimant should have submitted the report on July 27. As a result of being one day late, the employer received a payment of about \$1000.00 instead of \$3000.00.

After discharging the claimant, the employer hired two full-time MDS coordinators, one for long-term care and one for skilled care.

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).

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 employer discharged the claimant for unsatisfactory job performance. The employer established business reasons for discharging the claimant, but the facts do not establish that the claimant intentionally failed to perform her job satisfactorily. The claimant worked to the best of ability after her job responsibilities increased. On July 28, the claimant made an inadvertent mistake. She did not commit work-connected misconduct. Therefore, as of July 31, 2011, the claimant is qualified to benefits.

DECISION:

The representative's August 29, 2011 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons. Even though the employer was not satisfied with the claimant's work performance, she worked to the best of her ability. She did not commit

work-connected misconduct. As of July 31, 2011, the claimant is qualified to receive benefits, 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