

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LARICHICA BAUER**  
Claimant

**APPEAL NO: 10A-UI-12975-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HOWROYD WRIGHT EMPL AGENCY INC**  
Employer

**OC: 07/25/10**  
**Claimant: Respondent (1/R)**

Section 96.5-2-a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's September 7, 2010 determination (reference 02) 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. Cassandra Gearhart, an account executive, appeared on the employers' 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 work-connected misconduct?

**FINDINGS OF FACT:**

The employer, a temporary employment firm, assigned the claimant to a temp-to-hire job on December 2, 2009. The claimant understood that when she was unable to work, she was required to either call the employer or her on-site supervisor, the client's employee.

The claimant notified the employer or the client the following days that she was unable to work as scheduled on December 30, 31, January 21, February 10, March 4, 15, 17, and April 5. On December 31, the claimant was talked to about the importance of working as scheduled. The employer again talked to the claimant on March 15 about her absences. From December 31, 2009, through March 15, 2010, the claimant had been ill four days and one day there had been a family emergency. On March 30, the claimant was talked to about being on her personal email account too much instead of performing her work. The claimant's team lead also reprimanded the claimant for using profanity in her personal emails. The client considered the claimant to have a negative attitude as a result of the issues discussed with the claimant on March 30.

On April 5, the claimant notified the employer she was unable to work because her daughter was still ill. The claimant stayed home with her daughter instead of her husband because he did not have any time off to and his job was permanent where the claimant's job was a temporary job. The claimant worked the rest of the week. On April 9, the employer discharged the

claimant pursuant to the client's request. The client did not consider the claimant a reliable or dependable employee as a result of her continued absences. The client also considered the claimant to have a negative attitude and was not satisfied with her work performance.

**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 section 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).

After the client asked the claimant to be removed from the assignment, the employer was obligated to do so. The evidence indicates the claimant was discharged for business reasons, but she did not commit work-connected misconduct. When the claimant was unable to work it was due to the claimant or her child being ill. The claimant contacted her immediate supervisor or the employer when she was unable to work as scheduled. Even though the client did not consider the claimant a reliable or dependable employee, she was absent for justifiable reasons. Since the claimant was not discharged for work-connected misconduct, as of July 25, 2010, the claimant is qualified to receive benefits.

During the hearing, the employer raised the issue that the claimant later refused an offer of work the employer talked to her about. This issue is remanded to the Claims Section to investigate.

**DECISION:**

The representative's September 7, 2010 determination (reference 02) is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of July 25, 2010, the claimant is qualified to receive benefits,

provided she meets all other eligibility requirements. The employer's account is subject to charge. An issue of whether the claimant later refused the employer's offer of work is **Remanded** to the Claims Section to investigate.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs