IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

MICHAEL B ROOD
965 - 222 DR
OGDEN IA 50212

CARE INITIATIVES
C/O TALX/JOHNSON & ASSOCIATES
PO BOX 6007
OMAHA NE 68106-6007

Appeal Number: 04A-UI-03984-DWT
OC 02/29/04 R 02
Claimant: Respondent (5)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319***.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Care Initiatives (employer) appealed a representative's March 31, 2004 decision (reference 04) that concluded Michael B. Rood (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant's separation was for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 3, 2004. The claimant participated in the hearing. Roxanne Bekaert, a representative with TALX, appeared on the employer's behalf with David Boor and Cheryl Lindmark, the director of nursing, as witnesses for the employer. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on May 29, 2003. He worked as a full-time registered charge nurse.

In late December 2003, the claimant informed Lindmark he needed seven consecutive days off in late January for surgery he was going to have done. The claimant worked on January 25, 2004, and was then on a leave of absence. The employer initially expected the claimant to return to work on February 2 or 3. During the claimant's hospitalization, a second surgery was performed on the claimant, which required him to be off work longer than February 3, 2004.

The claimant informed the employer he had a second surgery and needed more time off because of complications from the surgery. On January 30, 2004, the employer told the claimant his employment status would have to be changed from a full-time supervisory employee to an as-needed employee status. The employer sent the claimant a letter on February 3 informing him that as a result of the change in his employment status, he would not be covered by the employer's insurance after February 29 unless he paid for his insurance and he was no longer eligible for family medical leave because neither the claimant nor the employer had any idea when the claimant would be released to return to work.

When the claimant talked to his doctor about the employer changing his job from a full-time supervisory charge nurse to an as-needed employee, who was required to do physical jobs, his doctor faxed a statement to the employer on February 5. This statement indicated the claimant could return to work on February 15 and perform his duties as a charge nurse. The claimant did not know his doctor faxed this release to the employer. Instead, his doctor kept telling the claimant his progress and when he would be released to return to work would be reassessed each week.

The employer required the claimant's doctor to verify the claimant would be able to perform all the jobs listed on the job duties required of a nurse. The claimant's doctor signed this form on February 13 and sent it to the employer.

The claimant had further complications and was hospitalized February 14 through 19, 2004. Based on the doctor's February 5 release, the employer did not remove the claimant from the February schedule and he was scheduled to work on February 15. When the claimant did not report to work, the charge nurse called Lindmark to find out if the claimant had called to report he was unable to work. The charge nurse also called the claimant's home and learned from his mother that the claimant was in the hospital. The charge nurse passed this information on to Lindmark. Even though employer knew the claimant was in the hospital on February 16, the employer kept the claimant on the February 16 schedule.

After the claimant was released from the hospital, he had a follow-up appointment with his doctor on February 23. During the February 23 office exam, the claimant learned his doctor had faxed a statement to the employer on February 5 indicating he could return to work on February 15.

In mid-February, the employer advertised for the claimant's job and hired a person to replace him. The new employee started employment on February 23. On February 24 or 25, the claimant called the employer indicating he was ready to return to work. The claimant then learned the employer had hired a new employee to fill his full-time position because he had not contacted the employer since February 11, 2004. The employer no longer considered the claimant an employee, full time or as needed as of March 9, 2004.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§96.5-1, 2-a. The facts establish the claimant did not voluntarily quit his employment. Instead, the employer initiated the separation by first placing the claimant on an as-needed status and then hiring a new employee to replace him. For unemployment insurance purposes, the employer discharged the claimant.

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 evidence shows the employer had no problem giving the claimant a leave of absence for a week. When the claimant had complications after a second surgery, the employer changed the claimant's employment status because the employer needed someone to work the shifts the claimant usually worked. The employer asserted the claimant's employment status was changed from full-time to as-needed only for insurance purposes. The employer cannot have it both ways. As of January 30, the claimant was either a full-time employee who was unable to work for medical reasons or he was an as-needed employee.

As a result of changing the claimant's employment status, the claimant's doctor tried to help the claimant by giving the employer a date in which the claimant could return to work even though the claimant had not been told when he could return to work. Although the claimant's doctor's office and the employer communicated, the claimant and employer were not effectively communicating with one another.

The employer contended that after the employer knew the claimant was hospitalized on February 15, the employer expected the claimant to work on February 16. The facts indicate the employer made minimal efforts to contact the claimant or a relative to find out when he could return to work after he was hospitalized. The employer did not even know if the claimant

would be able to work when he was released from the hospital. By this time, the employer had already placed an ad for a new employee. As of February 23, the employer discharged the claimant by hiring a new employee to replace him. The employer discharged the claimant when he was unable to work and had not been released to work. The claimant's failure to contact the employer until he had been released to work again is understandable after the employer insisted the claimant could not return to work until his doctor signed a form indicating the claimant was able to perform all the physical job duties of a nurse.

The claimant did not intentionally fail to return work, instead he was unable to return to work on February 15 and was not able to work until February 24 or 25. The employer established business reasons for discharging the claimant. The facts do not, however, show that the claimant committed work-connected misconduct. Therefore, as of February 29, 2004, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's March 31, 2004 decision (reference 04) is modified with no legal consequence. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of February 29, 2004, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/pjs