

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

CHRISTINA M GOBB
1257 E 37TH CT
DES MOINES IA 50317

IOWA CORRECTIONAL INSTITUTE FOR
WOMEN
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

TALX UC EXPRESS
3799 VILLAGE RUN DR #511
DES MOINES IA 50317

Appeal Number: 05A-UI-02433-SWT
OC: 01/23/05 R: 02
Claimant: Respondent (1)

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 is 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:

The employer appealed an unemployment insurance decision dated March 4, 2005, reference 02, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on April 28, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing. David Williams participated in the hearing on behalf of the employer with witnesses, Patti Wachtendorf, Sheryl Baney, Steve Mitchell, and Monica Reynolds. Exhibits One through Ten were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked full time as a correctional officer from May 30, 2000, to December 14, 2004. The claimant had worked on the day shift from 6:00 a.m. to 2:00 p.m., but her position was eliminated, and for the last year of her employment, the claimant was working on the night shift from 9:30 p.m. to 7:30 a.m. The claimant was never able to adjust to working the night

shift and found it difficult to get enough rest. The claimant bid for dayshift positions with the employer three or four times but was never hired.

After December 14, 2004, the claimant was off work on medical leave until December 28, 2004, when she had exhausted all of the leave she had available. The claimant was suffering from severe headaches, nausea, and diarrhea. She called in and notified the employer that she was unable to work on each for the days that she missed. She was notified on December 29, 2004, that her leave had expired and that any further leave taken without pay would be considered unauthorized. The claimant continued to call in sick after December 29.

The claimant began seeing a licensed mental health counselor, Steve Mitchell, on December 30, 2004. Mitchell supplied the claimant with a return to work certificate dated January 7, 2005, that stated the claimant had been under his care from December 30, 2004, to the current date and she was able to return to work on January 8, 2005, with the restriction that she work on the dayshift. Mitchell had determined that working the night shift was detrimental to her health. The claimant submitted the certificate to the employer.

After receiving the certificate, the security director sent a letter to Mitchell on January 10, 2005, for the purpose of determining whether the claimant had a disability and whether she could perform the essential functions of her job with or without reasonable accommodation. The claimant submitted a request for reasonable accommodation under the Americans with Disability Act (ADA) on January 12, 2005. Mitchell originally determined that the claimant could perform the essential functions of her job with a reasonable accommodation but she did not have a disability as defined by the ADA. Later, Mitchell revised his opinion after further research into the ADA and concluded the claimant did have a disability as defined by the ADA. Mitchell stated that many of the physiological symptoms and her mental health problems were directly linked to the particular nighttime hours that she worked and he recommended that for the next three months should be allowed to work the dayshift subject to reevaluation after that period.

After reviewing the information from Mitchell and the claimant's request for reasonable accommodation, the security director decided in a written letter dated January 24, 2005, that her request would be denied on the basis that a change in shift would not be reasonable considering the operational efficiency of the facility. The claimant was directed to report to her shift as scheduled. The claimant received the letter on January 25, 2005. The claimant continued to call in sick and did not report to work because her health care provider had advised her not to return to the night shift because it was detrimental to her health.

On February 1, 2005, the employer discharged the claimant because the claimant had failed to report to work as directed and was absent from work on January 28, 29, and 31, 2005.

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.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand 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 to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established in this case. The preponderance of the evidence establishes that the claimant was discharged because she was unable to work due to medical and psychological reasons. No willful and substantial misconduct has been proven in this case. The testimony from Mitchell establishes

that if the claimant had reported to work as instructed, it would have been detrimental to her health and contrary to the advice that he had given the claimant.

DECISION:

The unemployment insurance decision dated March 4, 2005, reference 02, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

saw/pjs