

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICHOLE J ADELMUND
Claimant

APPEAL NO: 13A-UI-06016-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE WATERFORD AT AMES
Employer

OC: 04/21/13
Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's May 9, 2013 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 did not respond to the hearing notice or participate in the hearing. Chris Scheibe represented the employer. Frederick Killian, the executive director, and Lisa Jolley, a certified nurse aide, testified on the employer's behalf. Based on the evidence, the employer's arguments, 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 on January 21, 2013. The employer hired the claimant to work as a full-time nurse aide, but she had to satisfactorily complete her 90-day probation. When the claimant started working, the employer informed her that she was not allowed to have her cell phone on her person while she worked.

Prior to February 27, 2013, the claimant received a verbal and written warning for attendance issues. The employer discharged the claimant for her February 27, 2013 conduct.

On February 27, 2013, the claimant was helping residents in the dining room. When she was helping residents leave the dining, she received a phone call from her husband on her cell phone. He told her he had fallen and severely hurt his head. He needed her to take him to the hospital. After receiving this call, the claimant became very anxious and wanted to leave work to go to her husband.

In an effort to leave work early, she told a resident to hurry up because she did not have all day. The claimant did not request assistance, but someone contacted Jolley to the dining room because of the claimant's agitated conduct. When Jolley arrived, she noticed the claimant did

not give residents her full attention but instead concentrated on reading or sending a text message on her cell phone. Jolly told the claimant to leave.

After talking to Jolly, the claimant and another person, the employer discharged the claimant for the way she talked to a resident and her failure to give residents her full attention on February 27. The employer considered the claimant's conduct after she received the phone call as resident abuse. One resident told Killian that she did not want the claimant to help her in the dining room again because the claimant had embarrassed the resident on February 27.

The claimant did not work after February 27, 2013.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges or suspends 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 discharged the claimant for justifiable business reasons. The claimant's conduct after she learned her husband had fallen and needed her to take him to the hospital amounts to an isolated incident. Her February 27 agitated, conduct was inappropriate, but understandable after she learned her husband had fallen and injured his head. The evidence does not establish that the claimant intentionally disregarded the employer's interests. She did not commit work-connected misconduct. As of April 21, 2013, the claimant is qualified to receive benefits.

The employer is not one of the claimant's base period employers. During her current benefit year, the employer's account will not be charged.

DECISION:

The representative's May 9, 2013 determination (reference 01) is affirmed. The employer discharged the claimant for justifiable business reasons, but the claimant did not commit work-connected misconduct. As of April 21, 2013, the claimant is qualified to receive benefits,

provided she meets all other eligibility requirements. During the claimant's current benefit year, the employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css