

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

EVELYN D DAVIS Claimant KEOKUK AREA HOSPITAL Employer	<div>68-0157 (9-06) - 3091078 - EI</div> <div>APPEAL NO: 08A-UI-03385-DT ADMINISTRATIVE LAW JUDGE DECISION</div> <div>OC: 03/02/08 R: 04 Claimant: Respondent (1)</div>
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Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Keokuk Area Hospital (employer) appealed a representative's March 27, 2008 decision (reference 01) that concluded Evelyn D. Davis (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 22, 2008. The claimant participated in the hearing. Louise Skow appeared on the employer's behalf and presented testimony from one other witness, Nancy Krause. 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:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on June 13, 2005. She worked full time as a central supply technician on the second shift. Her last day of work was February 22, 2008. The employer suspended her on that date and discharged her on February 28, 2008. The reason asserted for the discharge was allegedly being away from the building without coverage or authorization after a prior counseling.

On or about February 20 an employee of another area of the hospital reported to the personnel department that the claimant had been outside in the parking lot for approximately 20 minutes around 7:00 p.m. on February 18; another employee of that department also indicated to the employer the claimant had been in the parking lot during this time. When confronted and during the hearing the claimant denied that she had been out of the building on February 18 any time after her break at 5:00 p.m., and asserted that she had even been in the building's cafeteria at 7:14 p.m. to receive a pizza delivery, but that she had been paged and so had immediately gone to take care of that page, and so had not even been able to stay in the cafeteria at that time to have the pizza. Because of the employer's conclusion that the claimant had been out of the building, the employer discharged the claimant.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

Iowa Code § 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.

The focus of the definition of misconduct is on acts or omissions by a claimant that "rise to the level of being deliberate, intentional or culpable." Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
 - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or

- b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
- 2. Carelessness or negligence of such degree of recurrence as to:
 - a. Manifest equal culpability, wrongful intent or evil design; or
 - b. Show an intentional and substantial disregard of:
 - 1. The employer's interest, or
 - 2. The employee's duties and obligations to the employer.

Henry, supra.

The reason cited by the employer for discharging the claimant is her allegedly being outside the building when unauthorized on February 18. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant in fact had been outside the building when unauthorized on February 18. The employer relies exclusively on the second-hand account from the two other department's employees; however, without that information being provided first-hand, the administrative law judge is unable to ascertain whether those employees might have been mistaken, whether they actually clearly observed, whether they are credible, or whether the employer's witness might have misinterpreted or misunderstood aspects of their reports. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's March 27, 2008 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs