

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AARHN R KELLER

Claimant

APPEAL NO. 08A-UI-02795-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA

Employer

**OC: 02/17/08 R: 01
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The University of Iowa (employer) appealed a representative's March 12, 2008 decision (reference 01) that concluded Aarhn R. Keller (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 7, 2008. The claimant participated in the hearing. David Bergeon, Katie Charter and Cindy Reed appeared on the employer's behalf. 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 employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on August 25, 2006. The claimant worked part-time. She was scheduled to work on-call one night a week and one weekend a month. Charter was the claimant's supervisor.

During her employment Charter gave the claimant verbal and written warnings. On November 6, 2006, Charter gave the claimant a verbal warning. On February 23, 2007, Charter gave the claimant another verbal warning and documented this warning in an email to the claimant. On October 30, 2007, Charter gave the claimant a final written warning for failing to timely answer her pager. On this occasion the claimant's pager did not go off and she did not receive the page until two hours later. The employer still gave the claimant a written warning.

On January 16, the claimant was scheduled to work at 5:00 p.m. The claimant was ill and her mother took her to the hospital. The claimant's mother notified Charter that the claimant was ill and unable to work as scheduled on January 16. Charter reminded the claimant's mother that if the claimant could not work as scheduled on January 18, she needed to find a replacement or call Charter before 5:00 p.m. if she could not work or find a replacement.

On January 18, the claimant decided she was well enough to work and intended to work her scheduled hours. The claimant received a call to go to Council Bluffs. On her way to Council Bluffs, the claimant became ill. The claimant contacted Charter about 7:30 p.m. to report she was ill and unable to work. After the claimant talked to Charter, the claimant found another employee who went to Council Bluffs and took care of this call. The claimant found another employee to work her shift on January 19, 2008. Charter took the rest of the claimant's January 18 shift.

On January 23, 2008, the employer discharged the claimant for failing to work as scheduled and for failing to properly notify the employer she was unable to work as scheduled. Charter concluded the claimant should have known she was unable to work based on the length of time she was unable to work when she had been ill before.

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 § 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).

The employer may not have considered the claimant a reliable employee. As a result, the employer had justifiable business reasons for discharging the claimant. The facts do not, however, establish that the claimant intentionally or substantially disregarded the employer's interests. On January 18, the claimant intended to work and sincerely believed she was able to work. The claimant had no way of knowing she would become ill in her vehicle when she was on her way to Council Bluffs on behalf of the employer. As soon as the claimant became ill, she notified Charter and then even found an employee who would take the Council Bluffs call. While Charter may not have appreciated filling in for the claimant at the last minute, her conclusion that the claimant should have found a replacement when the claimant felt well and went to work is illogical. Even if in the past it took the claimant more than two days to recover from an illness that does not mean she was not able to work on January 18. The employer's conclusion on this point is speculative and not based on any fact concerning the claimant's most recent illness. The evidence does not establish that the claimant committed a current act of work-connected misconduct. As of February 17, 2008, the claimant is qualified to receive benefits.

DECISION:

The representative's March 12, 2008 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute a current act of work-connected misconduct. As of February 17, 2008, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css