

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SAMANTHA J BENDON

Claimant

APPEAL NO: 14A-UI-01942-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PINNACLE HEALTH FACILITIES XVII

Employer

OC: 12/29/13

Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's February 13, 2014 determination (reference 04) 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 participated in the March 12 hearing. Nicole Strange, the director of nursing, and Kris Baker, a human resource representative, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct, or did the claimant voluntarily quit her employment?

FINDINGS OF FACT:

The claimant started working for the employer in December 2009. She transferred to the employer's Norwalk facility on October 13, 2013. The claimant worked part time as a CNA/CMA. When the claimant transferred, she told the employer she was starting school on November 4. On days she was at her clinical, the claimant could not get to work before 4:00 p.m. The employer typically scheduled the claimant to work 2:00 to 10:00 p.m.

On November 13, the claimant received a written warning because she failed to properly notify the employer she was unable to work as scheduled. On that day the claimant gave the employer an hour notice, but the employer's policy informs employees they must give a minimum of two hours' notice. When the claimant received the November 13 warning, the employer and claimant talked about her upcoming schedule. The employer understood the claimant could work on November 19 and 22 from 2:00 to 10:00 p.m.

The claimant did not realize she was scheduled to work at 2:00 p.m. on November 19, 2013. As a result, she did not call or report to work that day. The assistant director nursing called and talked to the claimant when she did not report to work at 2:00 p.m. Based on the assistant director of nursing's comment, "if you can't come to work, don't come back to work again." The

claimant understood the assistant director discharged her. As a result of understanding she was discharged, the claimant did not call or report to work on November 22. The employer ended the claimant's employment on November 25, 2013, after she did not call or report to work on November 19 and 22 and did not return Strange's phone calls.

The claimant established a claim for benefits during the week of December 29, 2013. She filed claims for the weeks ending January 4 through March 15, 2014. She received her maximum weekly benefit amount of \$301.00 each of these weeks. The employer assumed, but did not know if anyone from Thomas and Thorngren participated on the employer's behalf at the fact-finding interview.

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).

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).

On November 19 or sometime between November 13 and 19, the claimant reasonably understood she no longer had a job after talking to the assistant director of nursing. Based on the assistant director of nursing's comments, the claimant did not call or report to work on November 22. Although the director of nursing testified she called the claimant, the only call the claimant received was from the assistant director of nursing and the claimant talked to her.

Based on the assistant director of nursing's comment, it was reasonable for the claimant to understand she no longer had a job. It was not necessary for her to personally contact the director of nursing or anyone in the human resource department. The evidence indicates the employer ended the claimant's employment either before or on November 19, 2013.

Since there were communication issues and the claimant's schedule changed, the facts do not establish that the claimant intentionally failed to report to work as scheduled. She did not commit work-connected misconduct. As of December 29, 2013, the claimant is qualified to receive benefits.

DECISION:

The representative's February 13, 2014 determination (reference 04) is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of December 29, 2013, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css