

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAREN F AGAN
Claimant

APPEAL NO. 11A-UI-07123-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LAURENS COMMUNITY SCHOOL DISTRICT
Employer

OC: 05/01/11
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated May 24, 2011, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on June 23, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. Iner Joelson participated in the hearing on behalf of the employer. Exhibits One through Six were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked part-time as a cook for the employer from August 2007 to April 30, 2011. She was contracted to work six hours per day. She has worked Good Samaritan Society for about eight years, and her work schedule with the employer allowed her to work both jobs.

At the end of April 2011, the employer reorganized the kitchen staff. The employer decided the claimant would have to work eight hours per day instead of six. This new schedule would have interfered with her work hours with Good Samaritan Society.

After the claimant informed her supervisor that she could not accept the change in her work hours because of her other job, the supervisor discharged her for refusing to work the new schedule. The employer also considered the claimant's past disciplinary record in discharging her. The claimant was warned about abusing sick leave in December 2009, not completing her assigned duties in January, February and December 2010, failing to arrange for a replacement worker when she missed work in February 2011, and arguing with a coworker in mid-March 2011. Despite these warnings, the employer would have allowed the claimant to continue in employment if she had agreed to the schedule change.

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.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

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).

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

All of the discipline received by the claimant in the past has to be considered past acts. The current act was her declining to work the extra hours. No willful and substantial misconduct has been proven in this case based on her decision to decline the extra hours, even when the prior discipline is factored in. The claimant had been working at the nursing home before she began work for the employer. The employer had accommodated her schedule at the nursing home before, but now was insisting on a schedule that would have interfered with her other job. While the employer may have been justified in discharging the claimant because it needed someone who would work the hours needed after the reorganization, work-connected misconduct as defined by the unemployment insurance law has not been established.

The claimant remains disqualified based on a decision made in regard to her employment with the Good Samaritan Society on June 22, 2011.

DECISION:

The unemployment insurance decision dated May 24, 2011, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits based on this separation from work, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs