

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ASHLEY N GREAZEL
Claimant

APPEAL NO. 11A-UI-09950-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERCY HOSPITAL
Employer

**OC: 06/26/11
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated July 19, 2011, reference 02, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on August 22, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. Sheryl Knutson participated in the hearing on behalf of the employer with witnesses, Kim Lopez and Jeanne Hein.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a nursing technician from November 22, 2010, to February 16, 2011. Her supervisor was the nurse manager, Kim Lopez. The employer has a 90-day probationary period.

The claimant was absent from December 2, 4, and 5; January 10 and 24, and February 3 and 14. Each day the claimant was absent was due to her own or a family member's illness and was properly reported.

On January 25, the claimant was working as a floater on a unit she had not worked before. She asked for a list of her patients and was looking over the DINAMAP monitor because it was different than the one she was used to. The claimant believed a nearby nurse was laughing at her. She reported this to nurse manager and said she wanted to leave, but she was convinced to stay. The assistant nurse manager gave the claimant a list of patients but told her it wasn't the normal procedure. The claimant replied that she wasn't stupid, which was considered a rude comment.

On February 7, the claimant went to the director of nursing operations and complained that the coworkers on her shift were bitches and she could not put up with it anymore and was quitting. The director encouraged the claimant to stay and try and work out her differences.

On February 9, the claimant was asked by a patient what she thought of Iowa City Nursing and Rehab because she thought the claimant had worked there. The claimant had not worked there but was familiar with the facility because her great-grandmother had been a resident there. The claimant remarked that they had come a long way. The remark was overheard by staff members who considered it unprofessional and reported it.

Management also considered the claimant's time management skills were substandard and believed she spent too much time with patients rather than completing tasks efficiently.

On February 16, 2011, the employer discharged the claimant for failing to meet the employer's standard for attendance and performance during her probationary period.

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).

The unemployment insurance state: 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. 871 IAC 24.32(8).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof.

While the employer may have been justified in discharging the claimant under its probationary requirements, work-connected misconduct as defined by the unemployment insurance law has not been established. No current act of willful and substantial misconduct has been proven. At most, the evidence shows unsatisfactory work performance.

DECISION:

The unemployment insurance decision dated July 19, 2011, reference 02, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs