

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KARY C BISHOP
Claimant

APPEAL NO: 14A-UI-10096-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KAREN K WOLF DDS PC
Employer

OC: 08/24/14
Claimant: Appellant (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's September 19, 2014 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because the claimant had been discharged for disqualifying reasons. The claimant participated at the October 16 hearing. Dr. Karen Wolf, the owner, Dr. Quinn Morarend, Kathy Klinger, a receptionist, and Janet Nelson appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in September 2012 as a full-time receptionist. During her employment, the employer gave the claimant a couple of written warnings, November 2012 and May 2013, for using her cell phone at work, writing checks at her desk for personal bills and for her rude and negative attitude toward co-workers and patients. The claimant considered her working relationship with other employees as terrible. The claimant did not believe employees worked together and employees were not happy at work. The claimant did not feel needed, wanted or appreciated at work. The claimant was looking for another job when her job ended.

On August 14, 2014, the claimant and another employee had a brief verbal confrontation at the front desk. The incident started when the co-worker told a patient there was not a note in the computer. The claimant did not say anything when the co-worker was on the phone with a patient, but pointed to the note that was on the computer screen. After the co-worker was off the phone, the two women started a verbal confrontation. The claimant told the co-worker that she did not appreciate how she talked or addressed the claimant. When Wolf came to work other employees reported that a verbal confrontation took place between the claimant and another employee. While employees reported that name-calling and profanity was used during this verbal confrontation, the claimant denied that either she or the other employee did this.

The claimant knew the employer did not allow employees to use the employer's Internet during work hours for personal reasons. During the second week of August, a co-worker discovered an email that appeared to come from the employer's front desk and was sent to an outside email address in response to a job opening. The email had the claimant's updated résumé attached to it. Since the claimant's updated resume was attached to the email, the employer concluded the claimant used the employer's Internet and email to apply for another job while she was at work.

The claimant went on vacation the week of August 18. When the claimant returned from her vacation, the employer informed her she was discharged. On August 28, 2014, the employer discharged the claimant for using the employer's Internet at work and sending her résumés while working to apply for another job.

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 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).

The evidence demonstrated the toxic work environment between the claimant and her co-workers. Even though the claimant and her co-workers did not get along, the only logical explanation for the claimant's résumé to be attached to an email found on the employer's computer system is that the claimant used the employer's computer system, Internet and email, to apply for other jobs. The claimant did nothing wrong in looking for another job while working for the employer. But she knew or should have known she could not apply for other jobs while she was at work. The claimant also knew or should have known the employer did not allow employees to use the employer's computer system for personal reasons while at work. Sending résumés through the employer's computer system amounts to an intentional and substantial disregard of the employer's interests and the employer's rules. The employer discharged the claimant for reasons constituting work-connected misconduct. As of August 24, 2014, the claimant is not qualified to receive benefits.

DECISION:

The representative's September 19, 2014 determination (reference 01) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. As of August 24, 2014, the claimant is disqualified from receiving unemployment insurance benefits. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css