

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer on June 11, 1996. The claimant worked as a full-time catering associate. Winters has been claimant's supervisor since December 2004.

For approximately the last year of the claimant's employment, the employer started giving the claimant more written warnings for unsatisfactory job performance. The claimant believed the employer started picking out small details instead of appreciating the claimant for her willingness to work when other employees called in sick and making sandwiches for people who visited sick relatives. On August 3, the employer talked to the claimant about an unsatisfactory patient audit. (Employer Exhibits 5 and 5A.) On August 5, the employer gave the claimant her final written warning for poor job performance. The claimant understood her job was in jeopardy when the employer gave her the August 5 warning. (Employer Exhibits 4, 4-A and 4-B.)

On August 14, the claimant received verbal information that the patient in 114 had transferred to room 319. As a result of this communication, the claimant took the food tray for this patient to room 319. Upon entering the room, the claimant said hello to the patient whose name was on the tray. The patient was talking to another person but responded to the claimant. The claimant left the food for the person in room 319.

A short time later, Richey received a call that the patient in room 114, who had not transferred yet, was still waiting for her dinner. Richey called the claimant and told her the patient in 114 had not received her dinner. The claimant told Richey how this patient had been transferred to room 319 and the claimant had delivered her dinner. When Richey disagreed that the patient in room 114 had not received her dinner, the claimant went through the explanation again. Richey then told the claimant she was arguing with Richey. The claimant did not say anything else. The claimant went to the kitchen, got a food tray for the person in 114 and took it to her even though the claimant believed Richey should have done this for the patient. Richey tried a number of times to contact the claimant by phone to find out if she had taken food to the patient in room 114. Richey concluded the claimant intentionally failed to answer her phone. Richey reported the events of August 14 concerning the claimant to Winters.

The next day, the employer discharged the claimant because she failed to follow the employer's procedure about obtaining a written order when patients were transferred, for failing to say the patient's name before the claimant left the food tray for the resident and for being insubordinate to Richey on October by arguing with her and failing to answer her phone at work.

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. 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 claimant knew her job was in jeopardy on August 5 after she received her final written warning. On August 14, the claimant delivered a food tray to room 319 because she had been told the patient from 114 was transferring to room 319. The claimant did not think about getting paperwork to verify that this transfer had been made. When claimant delivered the food, she sincerely believed she delivered the food tray to the correct person. The patient even responded when the claimant said her name. When Richey contacted the claimant and accused her of not delivering a food tray to patient in room 114, the claimant tried to tell her she had delivered the tray and had been told to deliver it to room 319. Both the claimant and Richey became frustrated with one another. When Richey accused the claimant of arguing with her, the claimant said nothing more. After the phone call ended, the claimant made a food tray for the patient in room 114 and delivered it to the patient.

After the claimant and Richey talked on the phone, Richey concluded the claimant intentionally failed to answer her subsequent phone calls. There was at least one time, the claimant's phone rang, she picked it up and no one was on the line. The claimant had no idea Richey attempted to call her several times after their first phone conversation ended. Based on the facts of this case, the employer may have business reasons for discharging the claimant, but the claimant did not intentionally fail to perform her job satisfactorily and she did not intentionally disregard the standard of behavior the employer has to expect from an employee. The claimant did not commit work-connected misconduct. As of August 14, 2005, the claimant is qualified to receive unemployment insurance benefits.

#### DECISION:

The representative's September 7, 2005 decision (reference 01) is reversed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of August 14, 2005, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/pjs