

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

MONICA D SWIFT
APT 6C
1958 BROADWAY ST
IOWA CITY IA 52240-7019

FOUR OAKS INC OF IOWA
c/o TALX EMPLOYER SERVICES
PO BOX 1160
COLUMBUS OH 43216-1160

Appeal Number: 06A-UI-07310-DWT
OC: 06/18/06 R: 03
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Four Oaks Inc. of Iowa (employer) appealed a representative's July 12, 2006 decision (reference 01) that concluded Monica D. Swift (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 8, 2006. The claimant participated in the hearing. Greta O'Clair, Dusti Ketchem, and Stacey Walden appeared n the employer's behalf. During the hearing Employer's Exhibits One through Five were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer on February 28, 2006. The claimant worked full time as an overnight worker. When the claimant started working, other overnight workers showed the claimant how to do bed checks. Although the employer's written policy indicates employees are to make sure a body part of a sleeping person is seen when doing bed checks, the claimant was trained to open the door to see if a person was sleeping. Many times lights were not turned on and person(s) training the claimant did not always see a body part. The claimant did not understand that she had to actually see a body part – such as a foot or hand – before she could verify the person was sleeping in bed.

On June 16 when a parent returned a juvenile to the facility 1:00 a.m., another female juvenile told the claimant her roommate had vomited and she could not stand the smell. After getting the returning juvenile some medication and in her room, the claimant helped clean up the vomit in the room. Two female juveniles shared this room. After the room was cleaned up, the claimant proceeded to do her bed checks every 30 minutes. When the claimant made bed checks that shift, a male juvenile sometimes sat up in bed as though the claimant had startled him when she opened the door to make sure he and his roommate were in bed sleeping. The claimant made the required bed checks on the male juvenile and the two female juveniles that shared a room as required during her shift. The claimant recorded the three juveniles were in their beds sleeping. While the claimant did not see a hand or foot all the time, it looked as though the juveniles were in their beds sleeping.

Around 4:00 a.m., another staff member contacted the claimant to see if she knew where a van was at. The claimant did not know. The staff member who noticed the missing van assumed someone had borrowed the van. When Walden came to work at 7:00 a.m., the claimant had started waking up juveniles to take showers. The claimant reported that a male and two female juveniles were missing. The claimant did not relay to Walden that another staff member asked the claimant three hours earlier if she knew where a van was at.

After Ketchem came to work around 8:00 a.m., the employee who noticed the van missing at 4:00 a.m. reported this fact to Ketchem. When the employer learned the van had not been borrowed, the local police were contacted. The missing juveniles were later found in Davenport, Iowa.

The employer discharged the claimant on June 16 because she failed to provide supervision on her shift and did not follow the employer's procedures. Prior to June 16, the claimant's job was not in jeopardy.

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).

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 facts establish the employer discharged the claimant for business reasons. Although the employer concluded the claimant understood the necessity of seeing a hand or foot when she did bed checks, the claimant did not realize the employer required employees to visually see a hand or foot every time she did a bed check. Since the people who trained and worked with the claimant at night did not testify, the claimant's testimony as to how she was trained is credible. The claimant's failure to tell Walden about the missing van is understandable because the claimant was not the employee who noticed the van was missing and had only been asked if she knew if anyone had borrowed the van.

The claimant did not perform her bed checks in accordance with the employer's procedure, but the facts do not establish that she intentionally failed to perform her job or deliberately violated the employer's procedures. The claimant did not commit work-connected misconduct. Therefore, as of June 18, 2006, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's July 12, 2006 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of June 18, 2006, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account will not be charged.

dlw/kjw