

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CARRIE K MORGAN**  
Claimant

**APPEAL NO. 07A-UI-04590-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MERCY HOSPITAL**  
Employer

**OC: 04/08/07 R: 03  
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

Carrie K. Morgan (claimant) appealed a representative's April 24, 2007 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Mercy Hospital (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 22, 2007. The claimant participated in the hearing. Eric Brown testified on the claimant's behalf. Cathy Kinzer, Janine Richards, Monica Reed, Patti Steelman, and Tracy Platz appeared on the employer's behalf. 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 May 22, 2000. The claimant worked as a full-time staff technologist for the employer. Kinzer supervised the claimant.

During her employment, the claimant had a personality conflict with another employee, J.J. The two did not get along, and co-workers and students noticed the tension and negativity the two displayed toward one another. In an attempt to resolve the problems between the claimant and J.J., the employer had them both attend a meeting. The employer's plan did not work and the two were not able to resolve their problems. Finally, the employer transferred J.J. to the main hospital. The claimant did not believe she had any more problems with co-workers after the employer transferred J.J.

About this same time, the claimant also had personal issues she was trying to deal with. On February 8, 2007, the employer gave the claimant a written warning for inappropriate behavior toward co-workers by making negative comments about co-workers and/or the employer. The claimant asked the employer for specific examples of what she had done to warrant the

February 8 written warning. The employer did not give the claimant any details. The claimant did not know what she had done to prompt the written warning.

The claimant did not agree that the February 8, 2007 written warning was justified. The claimant concluded Kinzer exaggerated comments and believed she was behind the claimant's February 8 written warning. The claimant attempted to grieve the written warning, but she failed to take this action in a timely manner.

During the time there were problems with J.J., the employer suggested that the claimant go to the EAP. The claimant went two times. A representative of the EAP program advised the claimant to quit.

After the claimant received the February 8 written warning, the employer did not talk to her about any negative co-worker comments or that anyone complained about the claimant creating a hostile work environment. On March 29, the claimant was in the CR room with Brown. Right before Kinzer went home she saw the claimant and talked to her about upcoming schedule changes. The claimant's schedule did not change much. Kinzer grumbled about how the new schedule affected her. Just before Kinzer was about to leave, the claimant told her that she blamed Kinzer for distorting the truth, which resulted in the claimant's February 8, 2007 written warning. As a result of this comment, Brown noticed the conversation between the claimant and Kinzer became more personal. The claimant started crying and Kinzer spoke with a slightly raised voice. The claimant told Kinzer she felt Kinzer had betrayed her. Kinzer denied any involvement in the February 8 written warning.

At the end of this exchange, Richards came into the room. She noticed the claimant had been crying and there appeared to be tension between the claimant and Kinzer. When Richards first arrived, staff at the desk reported they had heard the claimant and Kinzer talking in raised voices. Richards did not hear any yelling or anyone speaking in a raised voice. When Richards asked if there was any problem, the claimant left and went to the bathroom.

After the claimant left, Richards wondered if she should follow the claimant and talk to her. Brown, Kinzer and Richards decided Platz would be the best person to talk to the claimant. Brown told Richards what had happened and that the claimant felt Kinzer had betrayed her. Brown indicated he wanted to work in a healthy work environment and thought that after the claimant and Kinzer had talked, the claimant resolved some issues that had not been left unanswered before.

The employer, however, concluded that the claimant's comments, emotional state and frustration on March 29 amounted to inappropriate behavior toward a supervisor and discharged her on April 6, 2007. The employer concluded that since the claimant had problems working with her co-workers since January and she still demonstrated problems, now with Kinzer, she was not resolving her issues even after the employer had warned her.

#### **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).

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 employer established business reasons for discharging the claimant. The facts show the claimant had unresolved issues with Kinzer, which the employer never addressed and the claimant could not let go of until she told Kinzer how she felt. The claimant may have used poor judgment when she "tried to clear the air" with Kinzer on March 29, but the facts do not establish that the claimant intentionally or substantially disregarded the standard of behavior the employer had a right to expect from her. Whether or not the claimant's feelings were justified, she took a step in attempting to resolve problems she could not put behind her until she told Kinzer how she felt. Kinzer naturally became upset by the claimant's accusations and disagreed with the claimant's assertions. The facts indicate the claimant became emotional and Kinzer may have raised her voice slightly. Even though the employer had problems with the claimant's attitude about her co-workers, the current act for which the employer discharged her does not amount to work-connected misconduct. As of April 8, 2007, the claimant is qualified to receive unemployment insurance benefits.

**DECISION:**

The representative's April 24, 2007 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of April 8, 2007, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw