

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAUL G SCHUBERT
Claimant

APPEAL NO: 13A-UI-14209-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA
Employer

OC: 12/01/13
Claimant: Respondent (1)

Iowa Code § 96.5(2) a- Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's December 23, 2013 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated at the January 22, 2014 hearing. Mary Eggenburg and Lu Wilford, the clinical manager, 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 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 April 1982. He worked as a full-time staff respiratory therapist.

During his employment, the claimant received a written warning on January 25, 2013. The employer considered the claimant to have been insubordinate when he did not register for a program by a certain date as his supervisor directed him to do. The claimant did not register by the date his supervisor told him to register because he forgot. The claimant attended the program even though he had not registered by the date his supervisor told him to. The claimant also received a written warning in early April when someone reported the bantering remarks the claimant and a nurse exchanged in a patient's room. The claimant acknowledged the comments were not professional, but the two were joking and had not meant any disrespect to a patient.

On October 7, the officer of the day, J.K., contacted the claimant around 2:38 p.m. and assigned the claimant to do a patient care. The claimant responded by letting J.K. know how much work he still had to get done before he left at 3:00 p.m. The claimant told J.K. he was unable to do the requested patient care before it was time for the claimant to leave. When J.K. did not respond, the claimant assumed J.K. would take care of this assignment himself. J.K. was a

supervisor who stressed did not want the claimant or others to work overtime hours. The claimant tried to be careful and not work overtime. When the claimant left work, he did not understand he would be in trouble for not completing a patient care after he told J.K. he was unable to do it. It was not unusual for employees to leave a task when a supervisor did not give the employee specific directions to work overtime and complete the assigned patient care. The employer gave the claimant a write up for failing to perform a procedure that a supervisor asked him to do on October 7.

After investigating the October 7 incident and reviewing the other warnings the claimant received, the department director made the decision to discharge the claimant. The employer discharged him on October 17, 2013. The claimant established a claim for benefits during the week of December 1, 2013. He has filed claims for the weeks ending December 7, 2013, through January 18, 2014. He received his maximum weekly benefit amount of \$408.00 for each of these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him 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).

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).

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. At most the claimant used poor judgment when he did not clarify with J.K. if he wanted the claimant to work overtime to complete a patient care after the claimant told J.K. he was unable to do the requested patient care before he had to leave work. The facts do not establish that the claimant committed a current act of work-connected misconduct. Therefore, as of December 1, 2013, the claimant is qualified to receive benefits.

DECISION:

The representative's December 23, 2013 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit a current a current act of work-connected misconduct. As of December 1, 2013, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css