

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LORRI R LYNDE
Claimant

APPEAL NO. 10A-UI-03036-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA CATHOLIC CONFERENCE
Employer

**Original Claim: 01/24/10
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated February 22, 2010, reference 01, that concluded she was discharged for work-connected misconduct. Telephone hearings were held on April 20 and May 4, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing with her representative, Harley Erbe, attorney at law. Paul Janke participated in the hearing on behalf of the employer with witnesses, Larry Lykin and Audra Meyers.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full-time for the employer as a custodian and maintenance worker from June 1997 to January 25, 2010. The office manager, Larry Lykin, was the claimant's supervisor starting in April 2009. Lykin counseled the claimant on August 10, 2009, because: (1) she had become defensive when he spoke to her about some wax spattered on the walls in the art room by another maintenance employee and (2) had not given him advice on what to do about a fire alarm that had sounded. He counseled her again on December 1 about chatting too much with students and staff and deficiencies in cleaning and maintenance tasks.

On the afternoon of January 22, Lykin became concerned about moisture from the tree creating icy conditions in front of the school. He decided the claimant should put down some ice melt. He called her cell phone, and the claimant, who was in the restroom, answered. He asked her where she was and she replied she was in the restroom. He said something she did not catch and hung up the phone. She went directly to Lykin's office and noticed that he was talking on the phone. One of her Friday afternoon tasks is to empty trash in the preschool. It was shortly before she had a scheduled appointment with Lykin, so she decided since he was on the phone she would get the trash emptied and come back. Lykin called her while she was emptying trash and told her he wanted ice melt put down and to meet at his office. The claimant went to Lykin's office, but Lykin left before she arrived as he decided to do it himself. The claimant then went to the garage to get the ice melt spreader. She did not know where Lykin wanted the ice melt, but

started spreading ice melt on the sidewalks around the school. She saw him spreading ice melt near the front of the school and then go back into the building. While she was spreading some more ice melt, and then she received a call from Lykin asked her where she was. She explained she was out laying ice melt. After Lykin asserted that she had not reported to his office and she insisted she had, the call ended.

The employer discharged the claimant on January 25, 2010, based on her prior history of discipline and her conduct on January 22, which was considered insubordinate.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. Mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good-faith errors in judgment or discretion are not misconduct within the meaning of the statute. 871 IAC 24.32(1).

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 substantial and 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).

871 IAC 24.32(8) provides that 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.

The current act that must be evaluated is the claimant's conduct on January 22, 2010. The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and the reliability of the evidence and by applying the proper standard and burden of proof. I find the claimant's testimony about what she did on January 22 to be completely credible. I find nothing that she did to be insubordinate that day. She performed her job to the best of her ability, responded to Lykin's instructions without unreasonable delay, and did what he asked her to do. It is obvious that missed connections created a perception in Lykin's mind that the claimant was avoiding him or not carrying out his instructions. I conclude his perception was inaccurate, and no current act of willful and substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated February 22, 2010, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw