

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATHERINE M BEACH
Claimant

APPEAL NO. 08A-UI-06718-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GRANDVIEW HEIGHTS INC
Employer

**OC: 06/22/08 R: 02
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated July 21, 2008, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on August 6, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Tom Hoskins participated in the hearing on behalf of the employer with witnesses, Laurie Kramer and Lorrie Stewart.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as a certified nurse aide from August 20, 2007, to June 20, 2008. In January 2008, the claimant received a verbal warning after she became involved in a verbal argument at work with her sister who also worked for the employer. On February 28, 2008, the claimant received a written warning after she made a comment loudly in the hall in presence of staff and other residents that the residents deserved better care.

In June 2008, the claimant agreed to give her cousin Tina a message to call Brandi regarding Tina's daughter. Brandi allegedly had witnessed some inappropriate conduct between Tina's daughter and a man who worked in the nursing home. The claimant gave Tina the message but said nothing more than that Brandi wanted to talk to her about Tina's daughter. Tina ended up leaving work before the end of her shift that day.

Employees falsely reported to management that the claimant was spreading rumors about Tina's daughter and the male employee. Consequently, the employer discharged the claimant on June 20, 2008, for disrupting care in the facility by disturbing other staff members.

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).

While the employer may have been justified in discharging the claimant, no current act of work-connected misconduct as defined by the unemployment insurance law has been established. The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The employer did not present any witnesses with first-hand knowledge about the claimant spreading rumors, which was why she was fired. The claimant credibly denied spreading the rumors. Her giving the message for Tina to call Brandi does not show willful and substantial misconduct.

DECISION:

The unemployment insurance decision dated July 21, 2008, 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/css