

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

NANCY B CONTE

Claimant

APPEAL NO. 14A-UI-10513-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOOD SAMARITAN SOCIETY INC

Employer

OC: 09/14/14

Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated October 2, 2014, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on October 29, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Joanne Miller participated in the hearing on behalf of the employer with witnesses Tonya Gray and Barb Gibbs.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer under its current ownership from December 1, 2013 to September 14, 2014. She had received past warnings in December 2013 and July 2014 for working outside her scope of practice and in February 2014 for not taking a resident to the dining room. In regard to the scope of practice issue, the claimant is a former nurse and had relayed information to the client's daughter from the doctor and nurses that the daughter felt should have been provided by the doctor and nurses directly. The incident about not taking the resident to the dining hall involved a person who did not want to go to the dining room because of loose stools. The claimant brought a tray with appropriate foods to the resident.

The claimant understood that she was scheduled to care for a client from 7:00 a.m. to noon on September 14. She had verified these hours with the care coordinator. In reliance on this schedule, the claimant had some church events scheduled after noon on September 14.

When she arrived the client's location at 7:00 a.m. one of the client's daughters was there and confirmed the 7:00 a.m. to noon schedule. Later, the daughter brought out a note written by another daughter that had the time for the September 14 visit as 8:00 a.m. to 1:00 p.m. The daughter asked the claimant if she could stay until 1:00 p.m. The claimant advised the daughter that she wasn't prepared to work until 1:00 p.m. and had church activities scheduled after noon. The daughter who had written the note was called. She said she would come in at 11:00 a.m. but was upset by the confusion about the schedule. The claimant called and spoke to the scheduler about what had happened. The scheduler told the claimant that 8:00 a.m. to 1:00 p.m. were the hours in the computer system.

The claimant then talked to the daughter who was coming in to relieve her again. The claimant offered to stay until noon, but the daughter said she would save her family money and come in at 11:00 a.m. The claimant stayed until the daughter arrived and then left the home at about 11:00 a.m. The daughter later complained about the issues with the schedule.

The employer discharged the claimant on September 16, 2014 for leaving work on September 14 and her prior discipline.

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. Iowa Code § 96.6-2; Cosper v. Iowa Department of Job Service, 321 N.W.2d 6, 11 (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).

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. No willful and substantial misconduct has been proven in this case. I believe the claimant's testimony that she believed she was scheduled from 7:00 a.m. to noon and that she had confirmed that prior to September 14.

DECISION:

The unemployment insurance decision dated October 2, 2014, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

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