

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JODIE L RHOTEN
Claimant

APPEAL NO: 10A-UI-00601-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JENNIE EDMUNDSON
MEMORIAL HOSPITAL
Employer

OC: 12/06/09
Claimant: Appellant (2)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed a representative's January 5, 2010 decision (reference 01) that disqualified her from receiving benefits, and held the employer's account exempt from charge because the claimant had been discharged for disqualifying reasons. A telephone hearing was held on February 22, 2010. The claimant participated in the hearing. Roxanne McDonald, the second shift team leader, and Kathy Heuwinkel, a benefits specialist, 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 April 10, 2006. She worked as a part-time cleaning technician. McDonald supervised the claimant.

On October 29, 2008, the employer placed the claimant on suspension status for attendance issues. The claimant's suspension status was for two years. On December 10, 2008, the claimant received a written warning for taking an unauthorized break.

On December 6, 2009, the claimant overslept. She was scheduled to work at 8:00 a.m. The claimant did not wake up until 9:00 a.m. She immediately called the employer to let the employer know she would be at work shortly. The employer told the claimant she did not need to report to work. The employer discharged the claimant on December 9, 2009, because she had another attendance issue on December 6, 2009, when she was already on suspension status for attendance issues.

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 claimant understood her job was in jeopardy in late October 2008 after the employer placed her on suspension status and she received a final written warning on December 10, 2008. The claimant did not have any attendance issues or other work-related issues until December 6, 2009. On this morning, the claimant inadvertently overslept. As soon as the claimant woke up she contacted the employer and was ready to report to work immediately. The claimant's failure to report on time on December 6, 2009, is an isolated incident. The facts do not establish that she intentionally failed to report to work as scheduled. The December 6, 2009 oversleeping incident does not constitute work-connected misconduct.

The employer established business reasons for discharging the claimant. The claimant did not however, commit a current act of work-connected misconduct. As of December 6, 2009, the claimant is qualified to receive benefits.

DECISION:

The representative's January 5, 2010 decision (reference 01) is reversed. The employer discharged the claimant for reasons that do not constitute a current act of work-connected misconduct. As of December 6, 2009, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account will be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css