

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on April 1, 2002. The claimant worked as a full-time CNA. The claimant transferred from another facility to Mercy Hospital in May 2004. Cooley has been her supervisor since May 2004.

On November 23, 2004, during her six-month performance review, the employer gave the claimant a work improvement plan and a final written warning. The employer talked to the claimant about responding to patients when called, time clock infractions, failing to attend unit meetings, failing to do work she told other co-workers she would do and failing to cooperate and effectively communicate with her co-workers. The employer warned the claimant that this was her final written warning and she could be discharged if she again failed to assist co-workers when asked.

After receiving several complaints from co-workers, Peterson and Baker talked to the claimant on May 19, 2005. The employer considered this a coaching to make sure the claimant understood she contacted the call desk if she was too busy to answer a page or help a co-worker. Peterson and Baker also stressed the importance of answering her pages and to make sure her pager was on at all times. Peterson and Baker tried to open up the lines of communication between the claimant and her co-workers. The claimant indicated she would try the suggestions. The employer noticed some improvement for a short time.

After May 19, there were various times Cooley talked to the claimant about responding to her pager and helping other employees. The claimant understood her job was in jeopardy if there were continued complaints.

The claimant worked as a floater. On September 17 the employer assigned the claimant to work in a different department. After the claimant's September 17 shift ended, nurses who worked with the claimant gave the employer a written complaint. The nurses reported the claimant failed to answer her pager, failed to communicate with co-workers, failed to inform a nurse about low vitals signs – low blood pressure and blood sugars levels – and failed to timely assist a patient as requested, which resulted in the patient almost falling out of bed.

Although the claimant denied these allegations, the employer discharged her on September 22, 2005. The employer discharged the claimant because complaints of this nature had been occurring for over a year.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code section 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).

On November 23, 2004, the claimant received a final written warning in part for failing to answer her pager and assisting her co-workers. On May 19, 2005, management talked to the claimant about making sure she answered her pager, had her pager on, and told the employer when she was busy with a job duty and could not provide the requested assistance. While the employer noticed some improvement after May 19, the employer continued receiving complaints that the claimant was not working with other employees by providing timely assistance.

Since the claimant has a history of failing to respond to requests for assistance and poor communication skills and the claimant understood her job was in jeopardy, the written complaint the employer received probably has merit. Unfortunately, the complaining nurses did not testify at the hearing. As a result, the record does not establish specifically what the claimant did or did not do on September 17. As a result, the evidence establishes compelling business reasons for discharging the claimant, but the evidence does not establish that the claimant intentionally and substantially disregarded the employer's interests on September 17, 2005. The employer did not show that the claimant committed a current act of work-connected misconduct. Therefore, as of September 18, 2005, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representatives' October 7, 2005 decision (reference 01) is affirmed. The employer discharged the claimant for compelling business reasons that do not amount to work-connected misconduct for unemployment insurance purposes. As of September 18, 2005, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kjw