

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NOLA C DECORA
Claimant

APPEAL NO. 08A-UI-11457-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

**OC: 11/09/08 R: 01
Claimant: Respondent (2/R)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Care Initiatives (employer) appealed a representative's December 5, 2008 decision (reference 02) that concluded Nola C. Decora (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 18, 2008. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which she could be contacted to participate in the hearing. As a result, no one represented the claimant. Lynn Corbeil, attorney at law, represented the employer. Angela Campbell, the director of nursing, and Jack Studer, the administrator, appeared on the employers' behalf. During the hearing, Employer Exhibits One, Two, Three, and Four were offered and admitted as evidence. Based on the evidence, the arguments of the employer, 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 employer hired the claimant to work as a full-time certified nurse assistant on September 24, 2008. The claimant worked the 6:00 a.m.-to-2:00 p.m. shift. On September 24, the claimant received a copy of the employer's attendance policy. (Employer Exhibit Two.) The attendance policy informs new employees if they have three unscheduled occurrence in the first 90 days of employment, they will be terminated. (Employer Exhibit One.)

On the claimant's first day of work, September 26, she called in sick. The claimant asked if this absence would count against her. The employer confirmed the absence would be considered as her first unexcused occurrence. The claimant called in sick on October 18, 2008. On October 22, 2008, the employer gave the claimant a written warning for having two unexcused occurrences within her first 90 days of work. (Employer Exhibit Three.) Also on October 22, the claimant left work at 9:30 a.m. The claimant did not receive prior authorization to leave work early. Shortly before the claimant left work, she told Campbell for the first time she had a doctor's appointment and would not be back the rest of the day. On October 28, the claimant again did not give the employer any advance notice that she had to leave work early. Shortly before noon, the claimant told the

employer she had to go to court and left work. On October 31, the claimant reported to work nine minutes late. On November 4, the claimant reported to work 23 minutes late. The claimant did not give the employer any reason for reporting to work late.

On November 6, the employer informed the claimant she was discharged for excessive absenteeism during her first 90 days of employment. (Employer Exhibit Four.)

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. 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).

The evidence shows that in addition to calling in sick two days, the claimant also left work early two days without providing the employer with any kind of advance notice and she was late for work two days. After the claimant received the October 22, 2008 warning, she knew or should have known her job was jeopardy. That same day, the claimant left work early, and then six days later she again left work early without telling the employer in advance she had a court appointment. The claimant did not give the employer any reason for reporting to work late on October 31 and November 4, 2008. These last four times the claimant did not work as scheduled, because she left work early without advance notification or failed to report to work on time, demonstrate an intentional disregard of the employer's interests. The employer established the claimant was discharged for work-connected misconduct. As of November 9, 2008, the claimant is not qualified to receive benefits.

DECISION:

The representative's December 5, 2008 decision (reference 02) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of November 9, 2008. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is remanded to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw