

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DALAINA F PORTER
Claimant

APPEAL NO: 10A-UI-16910-DW

**ADMINISTRATIVE LAW JUDGE
DECISION**

**RESIDENTIAL ALTERNATIVES OF IOWA
WINDMILL MANOR**
Employer

OC: 06/06/10
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's December 3, 2010 determination (reference 02) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated in the hearing with her attorney, Elizabeth Norris. The employer did not appear for the hearing. During the hearing, Claimant Exhibits A and B were offered but were not admitted as evidence. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons that constitute work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in June 2010. She worked as a full-time certified nursing assistant. The claimant worked as scheduled on October 27. The claimant was not scheduled to work again until October 31.

On October 29 the claimant and her former boyfriend had a confrontation that resulted in the claimant's arrest and being jailed. The claimant's sister contacted the employer on October 31 before the claimant was scheduled to work to notify the employer that the claimant was in jail.

The claimant was unable to contact the employer each day she was scheduled to work while she was in jail. When the claimant was released from jail on November 8, she contacted the administrator about returning to work. The employer asked the claimant to have her lawyer submit a statement about the incident that led to her arrest on October 29. The employer wanted to review that statement before making a decision about the claimant's return to work.

After the claimant's attorney provided the requested information, the claimant contacted the employer again on November 15 to check on the status of returning to work. The employer then

told the claimant that because she did not call when she was in jail; the employer had to terminate her employment 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).

Since the employer did not participate in the hearing, the evidence does not establish that the claimant violated any policy when she was absent and unable to work while she was in jail. To conclude the claimant had excessive, unexcused absenteeism is speculation when the employer did not present testimony. In this case, the claimant did not report to work October 31 through November 7, but the employer knew she was in jail and why she was not at work.

Since the employer did not participate in the hearing, the evidence does not establish that the claimant committed work-connected misconduct. Even though the claimant reopened her claim during the week of October 24, she was in jail until November 8. Therefore, she is not qualified to receive benefits until the week of November 7, 2010.

The employer is not one of the claimant's current base period employers. During the claimant's current benefit year, the employer's account will not be charged.

DECISION:

The representative's December 3, 2010 determination (reference 02) is reversed. The employer discharged the claimant, but the evidence does not establish that the claimant committed work-connected misconduct. As of November 7, 2010, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The claimant is not

eligible to receive benefits for the weeks ending October 30 and November 6 because she was in jail. During the claimant's current benefit year, the employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css