

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JUDITH A ROSE**  
Claimant

**APPEAL NO. 09A-UI-00567-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FLOYD COUNTY MEMORIAL HOSP COMM**  
Employer

**OC: 12/07/08 R: 02  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated January 13, 2009, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on January 29, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. Don Nosbisch participated in the hearing on behalf of the employer. Exhibits A and One through Three were admitted into evidence at the hearing.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked for the employer as a dietary assistant from November 6, 2006, to November 21, 2008. Carol Johnson supervised the claimant. Johnson warned the claimant on March 24 and July 2, 2008, that she was required to wash her hands after coughing, sneezing, or using the bathroom and was not to sample food.

The claimant was terminated on November 21, 2008, after an unidentified coworker reported that the claimant had coughed without covering her mouth or not washing her hands after coughing. The reports from the coworker were untrue. The claimant made special efforts to make sure she followed the employer's sanitary policies.

**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. 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 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 the credibility of the witnesses and the reliability of the evidence and by applying the proper standard and burden of proof. The employer's evidence regarding the final incident consisted of hearsay from an unidentified coworker. The claimant testified credibly and provided testimony that certain coworkers had a motivation to lie about her conduct. No willful and substantial misconduct has been proven in this case.

**DECISION:**

The unemployment insurance decision dated January 13, 2009, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw