

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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CARE INITIATIVES
c/o JOHNSON & ASSOC/TALX
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Appeal Number: 06A-UI-03247-DWT
OC: 02/19/06 R: 03
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Care Initiatives (employer) appealed a representative's March 13, 2006 decision (reference 01) that concluded Christina M. Yeo (claimant) was qualified to receive unemployment insurance 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 April 11, 2006. The claimant participated in the hearing. Lynn Corbeil, attorney at law, appeared on the employer's behalf with Miriam William, the director of nursing, testifying on the employer's behalf. During the hearing, Employer's Exhibits One through Eleven were offered and admitted as evidence. 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 in September 2005. The claimant worked as a full-time certified nursing assistant on the night shift. The claimant understood the employer required employees to call two hours before a scheduled shift if they were unable to work as scheduled. The claimant also understood the employer considered an employee to have abandoned the job if the employee failed to report to work or call in for two consecutive days. (Employer's Exhibit Six.)

On February 10, 2006, the claimant was scheduled to work at 10:00 p.m. The claimant called the employer about 8:30 p.m. to report she had just been notified that her son had been taken to the emergency room. The claimant called the employer again around 9:50 p.m. to let the employer know she would be late for work because the doctor had just looked at her son's broken ankle. (Employer's Exhibit Three.) The employer did not have a record of the claimant calling again around 3:00 a.m. to let the employer know she was still at the emergency room with her son. The claimant's son was not released from the emergency room until about 5:00 a.m. The claimant did not go to work because she was only scheduled to work until 6:00 or 6:30 a.m.

On February 11, the claimant was scheduled to work 10:00 p.m. to 6:30 a.m. The claimant called the employer around 9:00 a.m. on February 11 to report she was unable to work that night because her nine-year old son was being admitted to the hospital for dehydration. The claimant stayed with her son at the hospital all day and all night. The employer's records do not indicate the claimant called the employer to report she was unable to work her shift. William did not talk to the morning charge nurse, but this nurse usually reports anyone who calls in.

On February 12, the claimant was scheduled to work at 10:00 p.m. The claimant was sick on February 12 and did call the employer to report she was ill and unable to work. On February 13, 2006, William called the claimant and left a message for the claimant to contact her because the employer considered the claimant's job in jeopardy. The claimant called the employer later in the day and talked to Fran, an employee. The claimant called because she wanted to know if she was on the schedule. Fran told the claimant the employer had taken her off the schedule.

The claimant called William on February 14 and left a message for her to contact her. William did not return the claimant's call. The employer sent the claimant a certified letter on February 13. The letter informed the claimant she was discharged because she had two no-call/no-show incidents on February 11 and 12, 2006. (Employer Exhibit Eight) The claimant received the termination letter on February 15, 2006.

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).

The employer established compelling business reasons for discharging the claimant. For three days the claimant did not report as scheduled. With the exception of February 11, the employer had little or no notice the claimant was unable to work as scheduled. As a result, the employer reasonably concluded the claimant was not a dependable or reliable employee.

The claimant was unable to give the employer proper notice that she was unable to work as scheduled on February 10 because of an unexpected medical emergency, her son's broken ankle. While it was inconvenient for the employer to cover the claimant's February 10 shift, the claimant kept the employer apprised of her status as best she could under the circumstances that evening.

The claimant testified she contacted the day charge nurse on February 11 to report she was unable to work as scheduled that night. William acknowledged she did not ask the day charge nurse if the claimant had called in. Even though the claimant's name was not on the absent list and the day charge on duty usually accurately records all call-ins, the claimant's testimony that she called in that morning is credible and is not disputed. Therefore, the evidence does not establish that the claimant failed to call or report to work for two consecutive days. The facts establish the claimant did not report to work or notify the employer she was ill and unable to work on February 12. While this type of conduct is not condoned, the claimant's failure to notify the employer on February 12 at most amounts to an error in judgment, which may have been prompted by the claimant's illness. Under the facts of this case, the claimant did not commit work-connected misconduct. As of February 19, 2006, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's March 13, 2006 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of February 19, 2006, 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/tjc