

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GINA R WILDMAN
Claimant

APPEAL NO. 10A-UI-09821-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 06/14/10
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated June 30, 2010, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on August 25, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. Tom Kuiper participated in the hearing on behalf of the employer with witnesses, Mike Terrill and Sara Reiff. Exhibits One through Four were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a licensed practical nurse from June 14, 2006, to June 7, 2010.

She was verbally warned on January 4, 2010, about not contacting a physician about a medication error made by another nurse. She was warned in writing on April 28, 2010, for discourteous conduct toward a supervisor after telling the director of nursing that she needed to come up with a plan to deal with a situation. On May 20, 2010, the claimant and several other nurses received a written warning for failing to sign or initial that they had administered medications to residents on the medication administration record.

Physician orders for a resident directed that a dressing on an incision be changed daily. The dressing was changed on May 30, 2010. The dressing was not changed on May 31, June 1, and June 2, but the claimant was not responsible for the resident on those days. The claimant was responsible for the resident on June 3. She assessed the resident's incision site. She found the incision site to be clean, dry, and intact and documented it. She planned to return later to change the dressing; but, due to the press of the other work she was doing on her shift, she did not get back to the resident to change the dressing. When she gave her report to the incoming nurse, she told the nurse that the dressing still needed to be changed.

When the employer later found out the dressing had not been changed for several days, the claimant was discharged on June 7, 2010, for failing to observe written or oral instructions and carry out job duties.

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).

While the employer may have been justified in discharging the claimant based on its progressive discipline policy, work-connected misconduct as defined by the unemployment insurance law has not been established. The final incident did not involve willful misconduct and no repeated negligence equaling willful misconduct in culpability has been proven.

DECISION:

The unemployment insurance decision dated June 30, 2010, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw