

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERESA M GUSTAFSON
Claimant

APPEAL NO: 06A-UI-08613-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CENTRAL IOWA HOSPITAL CORP
Employer

OC: 07/30/06 R: 02
Claimant: Appellant (2)

Section 96.5-2- a - Discharge

STATEMENT OF THE CASE:

Teresa M. Gustafson (claimant) appealed a representative's August 23, 2006 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Central Iowa Hospital Corporation (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 12, 2006. The claimant participated in the hearing. The employer responded to the hearing notice, but was not available for the hearing. Based on the evidence, the arguments of the claimant, 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 May 1997. The last nine months of her employment, the claimant worked in the counseling department as a medical secretary. The claimant understood when an employee receives a third written warning, the employer may discharge the employee.

On June 28, the claimant received a confusing call from a Department of Human Services' employee. When the claimant told her supervisor about the call, the claimant understood her supervisor would support the claimant's actions. On July 11, 2006, the claimant received her second written warning for giving confidential information about a patient without written authorization to the Department of Human Services' employee.

Prior to July 28, the claimant told her supervisor she felt some doctors and co-workers did not want the claimant working in the department. The claimant felt like certain people were trying to end her employment.

On July 28, the claimant was working by herself. The mother of a patient called and asked to speak to her child's therapist because her child had run away. The mother, however, had a phone number in which to contact her child. The child's therapist and nurses did not work on Friday. The claimant asked the mother if she wanted to leave a message for the nurse, the mother left a message.. The claimant encouraged the mother to contact the police. Early the next week, the mother called and thanked the claimant for being so helpful.

The employer gave the claimant her third written warning for not following the employer's procedures by contacting the on-call therapist. The claimant had not done this because no one told her this was the procedure. The claimant did not think about calling her supervisor on Friday to find out what she should do. On August 2, 2006, the employer discharged the claimant for receiving three written warnings for unsatisfactory job performance.

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 may have had compelling business reasons for discharging the claimant because the employer was not satisfied with her work performance. The facts do not establish that the claimant intentionally or even substantially failed to follow the employer's procedures. The claimant worked to the best of her ability under the circumstances. The claimant did not commit work-connected misconduct. As of July 30, 2006, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's August 23, 2006 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of July 30, 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.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/cs