

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TONI C SCIACHITANO
Claimant

APPEAL NO. 09A-UI-14552-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE IOWA CLINIC PC
Employer

OC: 05/17/09
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated September 23, 2009, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on October 26, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. Marian Klein participated in the hearing on behalf of the employer with a witness, Gloria Dayton.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as endoscopy technician from July 20 to August 26, 2009. She had a 90-day probationary period. On August 7, 2009, she was warned about sleeping while on duty.

Employees are given one 30-minute lunch break. The claimant took a 41-minute break on July 29 and a 40-minute break on August 7.

Employees are required to wear personal protective equipment when sanitizing equipment, including gloves and a mask. The claimant's supervisor, Gloria Dayton, once saw the claimant remove her mask while sanitizing some equipment. When she did this, she walked away from the workstation to get some fresh air. Dayton alleged the claimant placed equipment in sanitizer vats, but the claimant denied this and there is no evidence to support this allegation.

On August 26, 2009, Dayton found an endoscopy mouthpiece that she believed the claimant was responsible for cleaning with some lipstick on it. She discharged the claimant that day for not properly cleaning equipment, violating safety rules, complaining about the amount of work and lack of breaking, being late coming back from work, having too many personal calls, and sleeping on the job. She was discharged for not successfully completing her probation.

The claimant performed her job to the best of her ability. She tried to be very thorough in cleaning the equipment and never deliberately left equipment dirty.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim.

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).

871 IAC 24.32(8) provides that past acts and warnings can be used to determine the magnitude of a current act of misconduct, but a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The current act of alleged misconduct that led to the decision to discharge was the endoscopy mouthpiece that was not clean. I do not believe whether taken separately, or in light of past discipline and conduct, the claimant committed willful and substantial misconduct or repeated negligence that equals willful misconduct in culpability.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim. If the employer becomes a base period employer in a future benefit year, its account may be chargeable for benefits paid to the claimant based on this separation from employment.

DECISION:

The unemployment insurance decision dated September 23, 2009, reference 01, is reversed. 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/css