

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KARINA K WELCH
Claimant

APPEAL NO. 13A-UI-06499-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GENESIS HEALTH SYSTEM
Employer

OC: 04/14/13
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated May 2, 2013, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on July 9, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Brandi Tiesman participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a lab technician from June 23, 2003, to April 15, 2013. Pam Donna was the claimant's supervisor. The claimant had been warned about rough treatment of patients on February 2, 2013, and being rude to employees on February 19, 2013. The warning on February 19 was a final warning.

On April 10, 2013, Donna told employees in a meeting to make sure and use the safety devices on needles before putting them in the sharps container. The claimant did not believe this applied to one type of butterfly needle, which did not have a retractable needle, but instead required a person to pull a plastic cover over the dirty needle. The claimant and other staff had routinely put these needles in the sharp container without pulling on the plastic cover. The claimant and other staff had done this for years in the presence of supervisors. The claimant had never been told she was doing anything wrong.

When Donna found that the claimant had put this type of butterfly needle in the sharps container without pulling on the plastic cover, the claimant was discharged for this and for her prior history of discipline on April 15, 2013.

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, 11 (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 reliability of the evidence and by applying the proper standard and burden of proof. I believe the claimant's testimony that she did not believe Donna's admonition about the needle safety devices applied to the butterfly needle in question.

No current act of willful and substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated May 2, 2013, 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/pjs