

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATHLEEN A BELDEN
Claimant

APPEAL NO. 11A-UI-14957-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**LUTHER CARE SERVICES/
HOMES FOR THE AGING**
Employer

**OC: 10/16/11
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated November 8, 2011, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on December 14, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. Shelly Corbin participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked part-time, about 20 hours per week, as a bed-maker in the employer's nursing home facility from November 10, 1995, to October 20, 2011. The claimant was informed and understood that she was to strip and replace the linens on all beds in the rooms on the "strip hall" designated on a list given to her.

At some point, the claimant stopped completing stripping all the beds on the strip hall because she was unable to keep up with completing all her job tasks. Instead, she was replacing linens that were soiled and remaking the beds. The claimant is a diabetic and has recently had problems with mobility due to the effect of the disease on her legs, which become painful as she works.

At the end of August 2011, the director of housekeeping, Shelly Corbin, changed the bed-making routine so that bed-makers were required to do their strip halls first. As a result, the claimant had to show she had stripped all the designated beds. After the new routine was adopted, the claimant was unable to keep up and finish all her assigned work in the time allowed despite working throughout her shift. She received a verbal warning for this on September 9.

On September 26, 2011, the claimant received a written warning for not making 14 assigned beds since she received her verbal warning. When Corbin told her that she suspected the

claimant was not properly stripping the bed before the new routine, the claimant admitted she had not. Corbin told her that she would be terminated if it happened again.

On October 5, 2011, Corbin placed the claimant on a three-day suspension for not completing all her assigned beds. She was told that if her performance did not improve, she would be terminated.

On October 19, 2011, the claimant spent close to three hours on the strip hall and ended up at the end of her shift with having eight beds that she was not able to complete by the end of her shift. This was not due to any lack of effort by the claimant but was because she was not able to work fast enough.

On October 20, 2011, Corbin discharged the claimant for failing to improve her work performance after being warned.

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: "While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act."

While the employer may have been justified in discharging the claimant, no current act of work-connected misconduct as defined by the unemployment insurance law has been established. The claimant was not discharged on September 26, after she admitted that she was not stripping all the beds in the strip hall, so this cannot be considered a current act of misconduct when the claimant was discharged almost a month later. The discharge was due to her inability to complete all her work tasks during her shift. I am convinced that this was not due to any deliberate misconduct by the claimant but was due to being physically unable to get the job done during her work shift. No current act of disqualifying misconduct has been proven.

DECISION:

The unemployment insurance decision dated November 8, 2011, 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