

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIAN E GUFFEY
Claimant

APPEAL NO. 08A-UI-06136-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOOD SAMARITAN SOCIETY INC
Employer

OC: 05/18/08 R: 03
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated June 23, 2008, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on August 7, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Karen Kaiser participated in the hearing on behalf of the employer. Exhibits One through Eleven were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as a certified nursing assistant from June 27, 2001, to April 24, 2008. Karen Kaiser, the director of nursing, was the claimant's supervisor. The claimant had received the following past discipline: a verbal warning on August 13, 2007, for attendance, a written warning on December 17, 2007, for violating the smoking policy, and a final warning on March 25, 2008, for horseplay in terms of wheeling himself in the halls in a wheelchair.

The claimant was discharged on April 29, 2008, for contacting the daughter of a resident on approximately April 16, 2008, to let her know her mother—who has Alzheimer's disease—was not doing well emotionally that day and had been crying. The daughter had previously told the claimant to call anytime if her mother was not feeling well. The claimant did not disclose any confidential medical information but only let the daughter know what he observed about her emotional state. The employer considered the call to have violated the claimant's job description, which states that CNAs are to report "resident's conditions to appropriate staff."

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 section 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).

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. 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.

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, work-connected misconduct as defined by the unemployment insurance law has not been established. No current act of willful and substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated June 23, 2008, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css