

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EMILY HOAGLUND
Claimant

APPEAL NO: 10A-UI-08698-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MORNINGSIDE CARE CENTER INC
Employer

OC: 05/16/10
Claimant: Respondent (2/R)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed a representative's June 10, 2010 decision (reference 01) that held the claimant qualified to receive benefits and the employer's account exempt from charge because the claimant's employment separation was for nondisqualifying reasons. A telephone hearing was held on August 4, 2010. The claimant participated in the hearing. Joey Hoefling, the administrator, and Kristin Behrendsen, the director of nursing, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits or did the employer discharge her for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on August 1, 2006. Prior to her employment separation, she worked as a part-time CNA. The claimant's job was not in jeopardy before the weekend of May 15-16.

The employer requires employees to request time off two weeks in advance. On April 11, the claimant made a request to use PTO time on May 15 and 29. When Behrendsen did not say anything to the claimant about her time-off request by April 27, the claimant talked to her. Behrendsen then told the claimant she could not grant her request for time off either day.

The next day, the claimant put in a request for two weeks off, May 15 to 29. Behrendsen granted the claimant time off May 17 through 29. The claimant remained on the schedule for May 15 and 16. Before the claimant came to work on May 13, Behrendsen put a note on her timecard that she had been granted time off May 17 through 29, but not May 15 and 16. Behrendsen had not talked to the claimant about her request for time off for two weeks. The claimant may not have received Behrendsen's May 13 note. The claimant did not check the status of her time off request by talking to Behrendsen or checking the schedule. Even though Behrendsen previously denied her request to take May 15 off, the claimant decided that if

Behrendsen did not specially tell her she had again been denied, the employer must have granted all of the time she had requested off.

The claimant did not call or report to work as scheduled on May 15 and 16. The claimant knew from the employer's policies that if an employee did not call or report to work for a scheduled shift, the employer considered that employee to have voluntarily quit by abandoning her employment. On May 17, 2010, the employer sent the claimant a certified letter informing her that as of May 13 she was no longer considered an employee because she had failed to call or report to work on May 15 and 16.

The claimant established claim for benefits during the week of May 16, 2010. She has filed for and received some benefits for the week ending July 10, 2010.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer, or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code sections Section 96.5-2-a. The facts do not establish that the claimant intended to quit her employment. The employer initiated the employment separation and discharged the claimant on May 17 with an effective date of May 13, 2010.

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 claimant's failure to contact the employer and verify the dates she had been granted for vacation, which included May 15, demonstrates an intentional and substantial disregard of the standard of behavior the employer had a right to expect. This is especially true after the employer had previously denied the claimant time off on May 15. The claimant's assertion that she assumed the employer granted all the time off she requested is not reasonable when the employer had previously denied her request for time off on May 15. Since the claimant learned on April 27 time off request for May 15 and 29 had been denied, it was unreasonable for her to not seek out Behrendsen and ask if all or part of her two-week request was granted or denied. When the claimant did not do this, it suggests she knew the employer had not granted her time off on May 15 and did not want the employer to verbally tell her again she was scheduled to work that weekend. The claimant admitted she did not look at the schedule after she requested time off from May 15 through 29.

Although the claimant's job was not in jeopardy before May 15, her actions or failure to take reasonable steps to make sure what if any time she had been approved for vacation amounts to work-connected misconduct. As of May 16, 2010, the claimant is not qualified to receive benefits.

An issue of overpayment or whether the claimant is eligible for a waiver of any overpayment will be remanded to the Claims Section to determine.

DECISION:

The representative's June 10, 2010 decision (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of May 16, 2010. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. An issue of overpayment for the week ending July 10, 2010, or whether the claimant is eligible for a waiver of any overpayment is **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs