

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NATHAN S DORSCHER**  
Claimant

**APPEAL NO. 08A-UI-02903-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**OC: 02/17/08 R: 01  
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated March 12, 2008, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on April 8, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Lynn Corbeil participated in the hearing on behalf of the employer with witnesses, Kellie Jimerson and Janet Jordon. Exhibits One through Four were admitted into evidence at the hearing.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked as a certified nurse's aide for the employer from December 18, 2006, to February 15, 2008. The claimant was counseled on December 21, 2007, for talking a resident out to smoke before he finished passing supper trays and taking a smoke break. On January 18, 2008, he received a written warning for using the wrong type of lift to transfer a resident.

On February 14, 2008, the claimant did not immediately report to the nurse's station when requested because he was assisting a resident. The nurse supervisor, Janet Jordon, believed the claimant was out on an authorized smoke break, but she was mistaken.

Also on February 14, the claimant had responded to a shower room light but was told to wait outside because they were not quite ready for him. The CNA in the shower room failed to turn off the call light. Jordon noticed the call light on and the claimant standing outside the shower room. She believed he was loafing and ignoring the call light. When she entered the shower room, the claimant went back to his other work.

Also on February 14, the claimant started a resident on a breathing treatment. He told the resident that he was going to step out for a couple of minutes to get a drink of pop. He went to the break room to get a drink of pop. A nurse approached him in the break room and accused

him of taking an unauthorized break. He tried to explain what he was doing, but the nurse belligerently told him to get back to work. He reacted by telling the nurse that he had no problem leaving work that night. The claimant did not intend to leave work before the end of his shift but said it because the nurse was berating him.

On February 15, 2008, the employer discharged the claimant based on the incidents on February 14 set forth above, which the employer decided amounted to insubordination.

### **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.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand 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 to be deemed misconduct within the meaning of the statute.

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).

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. The preponderance of the evidence establishes the claimant was not on an unauthorized smoke break when the CNAs were called to the nurse's station. I believe the claimant's testimony that he was asked to wait outside the shower room. I also believe the claimant had stopped for a couple minutes in the break room to have a drink of pop before going back to help the resident with his breathing treatment. I do not condone the claimant's threat to walk out but believe it was prompted by the nurse's unwillingness to listen to him when he tried to explain what he was doing and was an idle threat that the claimant would not have acted on.

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 work-connected misconduct has been proven.

**DECISION:**

The unemployment insurance decision dated March 12, 2008, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs