**IOWA WORKFORCE DEVELOPMENT**
**UNEMPLOYMENT INSURANCE APPEALS**

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

**KARRIE A RICE**
Claimant

**HCM INC**
Employer

**APPEAL NO. 07A-UI-07964-DWT**

**ADMINISTRATIVE LAW JUDGE DECISION**

**OC: 07/15/07 R: 03**
**Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

HCM, Inc. (employer) appealed a representative's August 9, decision (reference 01) that concluded Karrie A. Rice (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. A telephone hearing was held on September 5, 2007. The claimant participated in the hearing with her witness, Jill Holmes. After the hearing had been closed and the claimant had been excused, the employer contacted the Appeals Section. Based on the employer's request to reopen the hearing, the administrative file and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Is there good cause to reopen the hearing?

Did the employer discharge the claimant for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on January 2, 2006. The claimant worked as a licensed practical nurse.

On October 1, 2006, the employer gave the claimant a verbal warning for failing to follow established procedures. In early July 2007, a resident fell out of a wheelchair two times, but had been caught both times. A third time the resident fell, no one caught the resident. A co-worker was concerned about the resident's safety and contacted the on-call doctor. The doctor ordered a lap buddy for the resident. The next day the claimant talked to a therapist to see if the employer had a different wheelchair for the resident. The claimant wanted a wheelchair that would work better with a lap buddy. After therapists indicated a full-size activity tray would work better, the claimant contacted the doctor. The doctor agreed a full-size activity tray would be better and ordered this for the resident.

Later when another employee told the claimant the MDS coordinator indicated no trays would be used for the resident, the claimant was upset that the employer would do something that endangered a resident's safety. The claimant believed the resident would again fall. The claimant contacted the doctor again to find out why the employer would not allow a tray or lap buddy to be used with the resident.

The employer gave the claimant two warnings on July 18 for the July 5 incident related above. The first warning indicated the claimant failed to follow the employer's procedures when she requested a restraint without proper documentation or assessment. The employer indicated the claimant failed to start documentation as directed by the MDS coordinator. The second warning issued on July 18 informed the claimant that the employer discharged her for gross insubordination because she contacted the doctor after the MDS coordinator decided a lap tray was not necessary and expressed her frustration with the employer's decision.

The first time the employer contacted the Appeals Section about the September 5 hearing was at 1:25 p.m. The employer received information about the scheduled September 5 hearing, but assumed the former administrator called in the number for the hearing. The employer did not verify that the administrator had previously responded to the hearing notice. By the time the employer called at 1:25 p.m., the hearing had been closed and the claimant had been excused from the hearing. The employer made a request to reopen the hearing.

**REASONING AND CONCLUSIONS OF LAW:**

If a party responds to a hearing notice after the record has been closed and the party who participated at the hearing is no longer on the line, the administrative law judge can only ask why the party responded late to the hearing notice. If the party establishes good cause for responding late, the hearing shall be reopened. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. 871 IAC 26.14(7)(b) and (c). The employer did not contact the Appeals Section because the employer's witness incorrectly assumed that the former administrator, who had been discharged, called the Appeals Section in response to the hearing notice. The employer did not take reasonable steps to make sure someone on the employer's behalf followed the hearing instructions. As a result, by the time the employer called the Appeals Section for the first time at 1:25 p.m., the hearing had been closed and the claimant had been excused. These facts do not establish good cause to reopen the hearing. Therefore, the employer's request is denied.

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. 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 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).

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 record indicates the employer discharged the claimant for business reasons. The record indicates the claimant had concerns for a resident's safety. While the claimant should have expressed her concerns to the director of nursing if she did not agree with the MDS coordinator's decision, her failure to do so for this one incident does not rise to the level of work-connected misconduct. Therefore, as of July 15, 2007, the claimant is qualified to receive unemployment insurance benefits.

**DECISION:**

The employer's request to reopen the hearing is denied. The representative's August 9, 2007 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of July 15, 2007, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

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Debra L. Wise
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw