

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHELSIE M MOEN

Claimant

APPEAL NO: 10A-UI-17020-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ONEOTA RIVERVIEW CARE FACILITY INC

Employer

OC: 11/14/10

Claimant: Respondent (1/R)

Section 96.5-2 - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's December 9, 2010 decision (reference 01) that held the claimant qualified to receive benefits and the employer's account exempt from charge because the claimant had been discharged for nondisqualifying reasons. The claimant did not participate in the hearing. Brandi Hemesath, the director of nursing, and Deb Vondersitt, the administrator, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge finds the claimant qualified to receive benefits based on the reasons for her employment separation.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer in late October 2009. She worked as a part-time certified nursing assistant.

The claimant's last day of work as April 20, 2010, because of some surgery she needed. The claimant requested time off from work for her surgery. The claimant was not eligible for medical leave under the Family Medical Leave Act. The employer needed someone in the claimant's position and hired another employee in July 2010. In late October 2010, the employer received a doctor's statement that the claimant was released to work but could not run or jump. Although the claimant could perform work as a certified nursing assistant with these work restrictions, the employer did not have any work for her to do.

The claimant established a claim for benefits during the week of November 14, 2010. Even though an availability issue was listed on the hearing notice, since the claimant did not participate in the hearing this issue could not be addressed in this decision.

REASONING AND CONCLUSIONS OF LAW:

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 employer established justifiable business reasons for ending the claimant's employment by hiring another person for her position. The employer needed someone to do the claimant's work and she was unable to perform from April 20 through late October 2010. Since inability to perform does not constitute work-connected misconduct, the claimant is qualified to receive benefits based on the reasons for her employment separation.

It is not known if the claimant has any other work restrictions as of November 14, 2010, when she established her claim for benefits. The issue of whether the claimant is able to and available for work as of November 14, 2010, will be remanded to the Claims Section to determine the claimant's eligible to receive benefits if this has not yet been decided.

DECISION:

The representative's December 9, 2010 decision (reference 01) is affirmed. The employer ended the claimant's employment for justifiable business reasons, but the claimant did not commit work-connected misconduct. Therefore, as of November 14, 2010, the claimant is qualified to receive benefits based on the reasons for this employment separation. The employer's account is subject to charge. The issue of whether the claimant is able to and available for work as of November 14, 2010, is **Remanded** to the Claims Section to determine if this issue has not yet been addressed by the Claims Section.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css