

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PEGGY J BANDERAS**  
Claimant

**APPEAL NO: 13A-UI-06183-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ALEGENT HEALTH**  
Employer

**OC: 04/21/13  
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's May 20, 2013 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated in the hearing. Chris Scheibe represented the employer. Jennifer Smith, the senior human resource business partner, Joe Schelz, the operations director, and Jerri McKern, a lead supervisor, testified on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

**ISSUE:**

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

**FINDINGS OF FACT:**

The claimant started working for the employer as a full-time catering associate in August 1984. During her employment, the claimant received written warnings for performance issues. Prior to November 8, 2012, McKern talked to the claimant several times about making sure patients received menus so they could make menu choices for the next day.

The claimant received written warnings on September 5 and October 22, 2012, for performance issues. On November 8, the claimant received a final written warning because of her previous written warnings for performance issues. The November 8 warning was the first written warning the claimant received for failing to get menus to patients so they could make their menu selections for the next day. The final written warning informed the claimant that further problems could lead to her discharge.

The claimant did not have any problems getting menus to patients again until April 17, 2013. On April 18 nine patients had house trays for breakfast and the employer could not find menus for lunch and dinner for these patients. The claimant was not scheduled to work until April 20, 2013. When the employer could not find the menus for these patients, no one called the claimant. In the past, the employer has called the claimant when there was a question about something the claimant had or had not done.

On April 19, the missing menus were found on a desk. The employer does not know how the menus got on the desk because they had not been there before. When the claimant reported to work on April 20, the employer discharged her for failing to get menus to nine patients on April 17 so they could make their own menu choices. The employer discharged the claimant because of the previous written warnings she had received for performance issues.

The claimant understood it was her responsibility to give menus to patients so they could make their own menu selections, but sometimes this was not possible. When this occurred patients received house trays for breakfast, but then the claimant or another catering associated tried to make sure the patient made their own selections for lunch and dinner. It was not unusual for patients, especially hip and knee replacement patients, to receive a house breakfast.

### **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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established business reasons for discharging the claimant. Since the claimant had received a final written warning for performance issues, the next step was a discharge. The evidence does not establish that the claimant intentionally failed to do her job satisfactorily on April 17. Since the employer found the missing menus for these nine patients later, the evidence suggests the claimant gave menus to patients on April 17 and they made their meal selections. Since the claimant had not been told anything about the missing menus, the evidence suggests that someone else either moved or misplaced these menus. Even if the claimant had not given these nine patients menus on April 17, she did not have any performance issues since November 8, 2012. She may not have performed her job satisfactorily on April 17, 2013, but this isolated incident since November 8, 2012, does not amount to work-connected misconduct. As of April 21, 2013, the claimant is qualified to receive benefits.

**DECISION:**

The representative's May 20, 2013 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of April 21, 2013, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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