

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CAREY A KAPPEL
Claimant

APPEAL NO. 12A-UI-14451-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 10/21/12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated November 28, 2012, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on January 10, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. John Henson participated in the hearing on behalf of the employer with a witness, Jalissa Simmons. Exhibits One through Four and A through C were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as the activities director from October 22, 2010, to October 25, 2012. Jalissa Simmons is the administrator of the facility. One of the claimant's job responsibilities was to document the resident's attendance in the facility's scheduled activities. She received a verbal warning on June 4, 2012, for failing to be current in her activity attendance documentation, which was important to avoid infractions on state inspections.

The claimant was given additional tasks to perform outside of her job description that interfered with her ability to keep current on her activity attendance documentation. The claimant had complained about this to Simmons, but problems continued. The claimant also had problems getting attendance sheets from other employees for activities she did not directly conduct.

During the week of October 22, 2012, the claimant again was assigned extra tasks outside her job description, which interfered with getting her own work done. She asked Simmons by email for extra hours to keep up with her tasks but got no response. She spoke to Simmons about getting extra hours due to the extra work she was doing, but the request was denied.

On October 25, 2012, Simmons discharged the claimant for being behind on activity attendance documentation. This was not due to any willful failure to perform her job.

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.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

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, 11 (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).

No willful and substantial misconduct has been proven in this case. The claimant performed her job to the best of her ability, but not to her supervisor's expectations.

DECISION:

The unemployment insurance decision dated November 28, 2012, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css