

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**JESSICA M JOHNSON
2014 W 4TH ST
DAVENPORT IA 52802**

**CARMELITE SISTERS FOR THE AGED
& INFIRM – KAHL HOME FOR THE AGED
1101 W 9TH ST
DAVENPORT IA 52804**

**Appeal Number: 06A-UI-07872-SWT
OC: 06/25/06 R: 04
Claimant: Respondent (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated August 1, 2006, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on August 18, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing. Jim Fascher participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

The claimant worked as an licensed practical nurse/charge nurse for the employer from August 23, 2005, to April 4, 2006. The claimant was informed and understood that under the employer's work rules and Iowa nursing board rules, a licensed practical nurse being employed in a supervisory role was required to take a course on supervision of unlicensed nursing assistants within six months of employment.

The claimant was enrolled to take the supervisor course in November 2005 but was unable to complete the course due to a domestic violence situation that was not due to any fault of the claimant. She was granted a six-month extension of time from the nursing board to complete the course. The claimant was scheduled to take the course in January but the course was cancelled due to not enough enrolled students. She was scheduled to take the course again in late March. The course was six-weeks long and two days per week. The claimant missed the first day of class due to an unexpected serious illness of her children which would not allow them to attend school or be taken to a babysitter. She properly notified the school and the employer. The school told her that she was not able to make up the day or continue in the course because she had missed one day of class and there would not be another course to take before the six-month extension expired. The employer was told by the nursing board that the claimant could not continue working in a supervisory role.

The employer discharged the claimant for not meeting the requirement of completing the supervisor course because there was no work available that did not involve supervisory work.

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).

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 willful or substantial misconduct has been proven in this case. The claimant did not complete the supervisory course but not due to any fault on her part.

DECISION:

The unemployment insurance decision dated August 1, 2006, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

saw/kjw