

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

BEV J LYONS
326 – 3RD ST
MASON CITY IA 50401

GOOD SHEPHERD GERIATRIC CTR INC
PO BOX 1707
MASON CITY IA 50402

Appeal Number: 05A-UI-06544-DWT
OC: 05/22/05 R: 02
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:

Good Shepherd Geriatric Center, Inc. (employer) appealed a representative's June 15, 2005 decision (reference 04) that concluded Bev J. Lyons (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. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 11, 2005. The claimant participated in the hearing. Diane Horning, the chief executive officer, and Shari Brunsting appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits, or did not the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on March 10, 2005. The employer hired the claimant as a 90-day probationary employee. If the claimant completed her probation, she would be working as a full-time certified nurse assistant.

On April 11, 2005, the employer gave the claimant a written warning because of attendance issues. After the claimant started working for the employer, she was hospitalized and had not been able to work all the days she had been scheduled to work. On April 8, 2005, the claimant notified the employer she would be late for work. When the claimant did not report to work at all on April 8, the employer considered this a no-call/no-show incident. The claimant did not understand that the employer considered her April 8 absence as a no-call/no-show incident. Instead, the warning reminded the claimant she was on probation and needed to improve her attendance.

The claimant worked her shift as scheduled on May 17, 2005. The claimant hurt her back on May 20 while off duty. The claimant's doctor restricted her from working on May 20 and 21. Although the doctor's statement indicated the claimant could return to work on May 22, the claimant understood she was not allowed to return to work until May 23. The claimant did not call or report to work as scheduled at 10:00 p.m. on May 22.

The employer considered the May 22 absence the second time the claimant did not call or report to work. The employer discharged the claimant because of her repeated failure to work as scheduled during her probation. The employer discharged the claimant on May 23 when she called to find out when she was scheduled to work.

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 business reasons for discharging the claimant. Based on her attendance during her probation, the claimant did not establish that she was a dependable or reliable employee. The facts show the claimant misunderstood her doctor as to when she could return to work. The claimant made an honest mistake and did not commit work-connected misconduct when she failed to report to work or contact the employer on May 22. The claimant sincerely believed she was excused from work until Monday, May 23, 2005. Under these circumstances, the claimant is qualified to receive unemployment insurance benefits.

The employer is not one of the claimant's base period employers. During the claimant's current benefit year, the employer will not be charged.

DECISION:

The representative's June 15, 2005 decision (reference 04) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of May 22, 2005, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. During the claimant's current benefit year, the employer's account will not be charged.

dlw/sc