

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AMY FOTH**  
Claimant

**APPEAL NO: 13A-UI-13008-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**G M R I INC**  
Employer

**OC: 10/13/13  
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's November 13, 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. Jamie Papini, the director of operations, and Michael Tognetti, the general manager, appeared 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 in May 1995. She worked as a full-time service manager for 11 years. The employer requires employees to receive performance reviews twice a year. Giving employees these performance reviews was one of the claimant's job duties.

The employer learned in March 2013 the claimant had not given 15 required performance reviews. The claimant may have completed the written reviews, but she had not given 15 employees their review. The employer gave the claimant a written warning on March 14, 2013, for failing to timely give employees performance reviews. The employer indicated the claimant received the written warning for ethical issues and poor performance. After the March 14 warning, the claimant's performance improved and she kept up with the reviews for a few months.

In May when the claimant took over duties of another manager who went on maternity leave, Tognetti offered to help her. One duty the manager who went on leave had was scheduling. As a result of this manager's leave of absence, the claimant was in charge of all scheduling. While the claimant had done scheduling before, some of the procedures were new for her. It sometimes took the claimant 12 hours to complete schedules.

The claimant kept a spread sheet on her computer to help her timely complete employee reviews. The spread sheet told the claimant when reviews were due and the status of the completed or uncompleted review. On July 20, Papini asked to see reviews that were to have been completed. There were seven reviews the claimant had not yet started. The claimant admitted she was behind. She also showed the employer reviews she had completed but had not given to employees since January 2013. The claimant did not have an explanation as to why she had not given or completed some reviews. Even though the employer offered to help the claimant, she declined any assistance. She thought she could keep up with her work and the extra work by herself. The employer gave the claimant her final written warning on July 20 for failing to timely give employees performance reviews. The final warning informed the claimant that further incidents could result in her termination.

On October 1, the claimant had completed, but had not yet given nine employees their performance reviews. The claimant told the employer she had not been able to give these employees their reviews before October 1 because of changes in schedules. The employer suspended the claimant on October 1. The employer then reviewed the schedules of the claimant and the nine employees. The employer discovered that between September 2 and 27, there were 27 shifts that the claimant had worked with these employees. The claimant knew she was behind in giving employees their evaluations and planned to do this in early October. On October 2, the employer discharged the claimant for again failing to give employees timely performance reviews.

#### **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 evidence establishes the claimant knew or should have known her job was in jeopardy on July 20 when she received her final written warning for failing to timely give employees performance reviews. While giving employees performance reviews was one of the claimant's job duties, this was the only part of the job she was not completing satisfactorily. The claimant

knew her job was in jeopardy. She used poor judgment when she did not ask for help while she did her job and another manager's job.

Since the claimant had completed reviews by October 1, but had not yet given them to employees, the evidence indicates she did not intentionally fail to give employees timely reviews. The employer established business reasons for discharging the claimant. She demonstrated poor judgment when she did not ask for help, but the claimant did not commit work-connected misconduct. As of October 13, 2013, the claimant is qualified to receive benefits.

**DECISION:**

The representative's November 13, 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 October 13, 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

dlw/pjs