

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEAH R VANLOON
Claimant

APPEAL NO: 06A-UI-08069-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 07/16/06 R: 03
Claimant: Respondent (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated August 3, 2006, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on August 28, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing. Jessica Meyer participated in the hearing on behalf of the employer with witnesses, Dan Donahue, Michelle Chapman, and Patty McDonough. Exhibits One through Six were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked as a licensed practical nurse (LPN) for the employer from May 3, 2005, to June 28, 2006. The claimant received (1) a written warning on July 21, 2005, for not giving medication with foods as indicated in the medical administration record; (2) a verbal warning on December 14, 2005, for failing to give medication to a resident; and (3) a final warning on June 23, 2006, for allowing certified nursing assistants (CNA) to give a breathing treatment and apply an ointment in violation of the CNA scope of practice.

On the morning of June 24, 2006, another LPN noticed a resident's legs looked sunburned. She told the claimant who was caring for the resident to look at his legs. The claimant checked the resident's legs and they appeared pink. The resident asked if he could put some lotion that he had for his feet on his legs. The claimant responded that she would have to contact a doctor to get permission. The resident wanted her to call her personal doctor but the claimant explained that she would have to call the on-call doctor because it was a weekend. The resident and the claimant agreed that they would just wait to see if the sunburn got worse. The claimant understood from training and experience that nurses had discretion as to whether to chart sunburn when the skin was just pink. As a result, she did not chart his sunburn. She had contact with the resident for the rest of her shift and he never complained or approached her again about the sunburn.

The LPN who had told the claimant about the resident's sunburn was on duty the next day. She asked the resident whether the claimant had got something for his legs. The resident told the LPN that the claimant had refused to call the doctor and told him that he did not need anything for his legs and the doctor would not give him anything. The LPN noticed that the resident's legs were blistered. The doctor was called and treatment was obtained. The LPN reported what had happened to the director of nursing, and after an investigation during which the resident asserted the claimant had treated him like a dog and had refused to call the doctor two times, the claimant was discharged on June 28, 2006, for denying critical care and because of her past history of discipline.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant testified consistently and credibly that she did not refuse to call the doctor, had only spoke with the resident once on June 24, and exercised allowed discretion in not charting the resident's legs. The claimant's direct testimony outweighs the hearsay evidence from the resident. The director of nursing admitted that nurses had discretion in charting sunburns. The evidence establishes the claimant at most made a good faith error in judgment in failing to record an assessment or in failing to call the on-call doctor. No current act of willful or substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated August 3, 2006, 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/pjs