

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALLANAH J LEWIS

Claimant

APPEAL NO: 12A-UI-05692-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEALTHCARE OF IOWA

Employer

OC: 04/08/12

Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Healthcare of Iowa (employer) appealed a representative's May 8, 2012 decision (reference 02) that concluded Allanah J. Lewis (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 7, 2012. The claimant participated in the hearing. Teresa Minnis 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:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Affirmed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on April 21, 2011. She worked part time (about ten hours per week) as a dietary aide in the employer's long-term care nursing facility. Her last day of work was April 4, 2012. The employer discharged her on April 9, 2012. The reason asserted for the discharge was missing her shift on April 7.

The claimant typically worked weekend shifts. On Saturday, April 7, the claimant was scheduled for a 4:30 p.m. to 7:00 p.m. shift. However, she had misread the schedule and had believed that she had been scheduled for a 6:45 a.m. to 2:00 p.m. shift, which she also frequently did work on the weekends. When she attempted to report for what she believed was her morning shift, she discovered that she had misread the schedule and was not scheduled to work until later that day. The claimant had another part-time job at which she worked more hours than for the employer, and because of misreading her schedule with the employer, she was scheduled to work at her other job from 4:00 p.m. until 8:00 p.m. on April 7. The claimant

discussed the situation with her supervisor, who told her to find a substitute to cover her shift that afternoon.

The claimant called all of the other possible substitutes, including persons who were not regularly dietary aides but were certified nursing aide (CNA) with the employer who had in the past worked as dietary aides, but she was unsuccessful in finding a replacement. In the early afternoon she reported back to her supervisor that she had not found a replacement. The supervisor responded, "I don't know what to tell you," but she assumed that the claimant would have to call off work from her other job and work her shift with the employer. However, the claimant concluded that she had done everything she could to cover her shift with the employer and that she could not miss her work with the other employer, and so was absent from her shift with the employer. The employer then removed the claimant from the schedule and on April 9 informed her that she no longer had a job because she had not reported for her shift on April 7 and had not found a replacement. There had not been any prior disciplinary action against the claimant.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is her absence from work on April 7. Excessive unexcused absences can constitute misconduct, however, in order to establish the necessary element of intent, the final incident must have occurred despite the claimant's knowledge that the occurrence could result in the loss of her job. *Cosper*, supra; *Higgins v. IDJS*, 350 N.W.2d 187 (Iowa 1984). Under the circumstances of this case, the claimant's absence on April 7 was the result of inefficiency, unsatisfactory conduct,

inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's May 8, 2012 decision (reference 02) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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