

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MIRANDA J KIDWELL
Claimant

APPEAL NO. 14A-UI-02661-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GENESIS HEALTH SYSTEM
Employer

OC: 02/02/14
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated February 28, 2014, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on April 1, 2014. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Brandi Tiesman participated in the hearing on behalf of the employer with a witness, Adam Haut. Exhibit One was into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a registered nurse from June 1, 2010, to January 27, 2014. The claimant was informed and understood that under the employer's work rules, regular attendance was required and employees were required to notify the employer if they were not able to work as scheduled.

On May 31, 2013, the claimant was warned about her attendance after she was absent eleven times and tardy eight times from May 31, 2012, through May 25, 2013. She called in to report her absences, which were due to her own illness or the illness of her child. She was informed that if she had two additional absences within a 12-month period, she would receive the next step in the attendance policy. She received a final warning on December 31, 2013, after she was absent six times since November 1. She was informed that two additional unscheduled absences within a 12-month period would result in termination. The absences were properly reported and were due to her illness or the illness of her child.

On January 7, 2014, the claimant was absent due to her child being sick. She was absent due to illness on January 19 and 21, 2014. The absences were properly reported.

On January 24, 2014, the claimant was unable to work after being physically assaulted. She called in properly to report her illness.

On January 27, 2014, the employer discharged the claimant because of her chronic attendance issues.

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.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Iowa Code § 96.6-2; Cosper v. Iowa Department of Job Service, 321 N.W.2d 6, 11 (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 unemployment insurance rules provide: "Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer." 871 IAC 24.32(7).

While the employer may have been justified in discharging the claimant due to her attendance issues, work-connected misconduct as defined by the unemployment insurance law has not been established. No willful and substantial misconduct has been proven in this case. Her absences were properly reported and were due to illness or other reasonable grounds.

DECISION:

The unemployment insurance decision dated February 28, 2014, 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