

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

KAREEN RODRIGUEZ
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CARE INITIATIVES
c/o TALX/JOHNSON & ASSOCIATES
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Appeal Number: 05A-UI-02576-DWT
OC: 02/13/05 R: 03
Claimant: Appellant (2)

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:

Kareen Rodriguez (claimant) appealed a representative's March 14, 2005 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Care Initiatives (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 29, 2005. The claimant participated in the hearing. Jessica Meyer, a representative with TALX/Johnson and Associates, appeared on the employer's behalf with witnesses, Jeff Wollum, the administrator, and Sue Weber, the director of nursing. During the hearing, Employer's Exhibits One through Four were offered and admitted as evidence. 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 employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on May 12, 2003. The claimant worked as a full-time certified nursing assistant. The claimant received a copy of the employer's current attendance policy on January 2004. The employer's policy informs employees they will be discharged if within a 12-month period they have ten unscheduled occurrences.

On January 20, 2004, the employer gave the claimant a final written warning. The employer warned the claimant she would be discharged if prior to June 3, 2004, she had another absence without calling the employer. The employer also indicated that if the claimant had one more call-in within a 12-month period, the claimant would be discharged.

The claimant was late for work on February 6, 2004. She was not absent from work until August 4 when she notified the employer she had a lump by her ear and was unable to work as scheduled. On September 16, the claimant did not work. Instead, she went to the doctor because her back hurt. On October 23, 2004, the claimant's husband notified the employer that the claimant was hospitalized and was unable to work as scheduled. The claimant was in the hospital because of back problems. The claimant was late for work on November 11, 2004. On February 7, 2005, the claimant could not work as scheduled but made arrangements with a co-worker to work half her shift.

On February 8, 2005, the claimant was ten minutes late for work. The claimant carpools with other people and it was her turn to drive. By the time the claimant got all the riders to their employment, the claimant was late for work. On February 8, 2005, the employer gave the claimant a final warning for continued attendance problems. After the claimant received the February 8 written warning, she understood she would be discharged if she had one more absence during the next six months.

On February 12, 2005, the claimant's husband had an infection in his elbow. The claimant took her husband to the hospital between noon and 1:00 p.m. The claimant contacted the employer about 2:00 p.m. to report she was unable to work as scheduled. The claimant's husband was hospitalized for three days. He had surgery on his elbow on February 12, 2005.

The claimant worked as scheduled on February 13, 2005. The claimant was not scheduled to work on February 14. The employer did not put the claimant on the new schedule because she was absent from work on February 12, which violated the February 8 warning. When the claimant came to work on February 15, she asked Webber why she was not on the new schedule. When Webber indicated the claimant already knew why she was not on the schedule, the claimant's assumption that the employer discharged her was confirmed.

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. Even though Wollum planned to talk to the claimant on February 15, the employer did not want to continue the claimant's employment and did not intend to continue her employment by leaving the claimant's name off the new schedule.

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 law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

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. 871 IAC 24.32(8).

The employer established a compelling business reason for discharging the claimant. As a result of the claimant's repeated absences from work, the employer could not depend upon her. For unemployment insurance purposes the law states a claimant has not committed work-connected misconduct if she has properly reported her absence and there is a reasonable justification for being absent from work. In this case the claimant's most recent absence occurred when she had to unexpectedly take her husband to the hospital because his elbow was infected. The claimant did not plan to take her husband to the hospital and neither the claimant nor her husband thought he would undergo emergency surgery and remain in the hospital for three days. Under these facts, the claimant had justifiable reasons for not reporting to work on February 12. The claimant did not intentionally fail to work as scheduled. She did not commit work-connected misconduct. As of February 13, 2005, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's March 14, 2005 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of February 13, 2005, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kjf