

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MISTY D SCHAKEL
Claimant

APPEAL NO: 13A-UI-04489-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 03/10/13
Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's April 5, 2013 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because she had been discharged for nondisqualifying reasons. The claimant participated in the hearing. Treve Lumsden and Shawn Mikles, the administrator, appeared on the employer's behalf. During the hearing, Employer Exhibits One and Two were offered and admitted as evidence. 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 February 2009. The claimant worked as a full-time LPN. The claimant received a copy of the employer's workplace violence and harassment policy. The policy prohibits any acts or threats of violence by any employee against any other employee in or around the employer's facilities. Also, any employee who displays tendencies to engage in violent, abusive, or threatening behavior that the employer deems offensive or inappropriate is subject to corrective action, including termination. (Employer Exhibit Two.)

Prior to March 6, 2013, Mikles talked to the claimant about Facebook comments she had posted. Mikles talked to the claimant because during off duty hours, the claimant threatened to beat up another person who was pregnant. Mikles reminded the claimant to be careful about what she wrote on Facebook because not everyone who saw her comments was her friend. Since Mikles did not have an employee who was pregnant then, he did not tell the claimant or warn the claimant that her Facebook could be considered a violation of the employer's workforce violence policy.

On March 6, 2013 the claimant was upset with her sister. The claimant's father had recently passed away and after he passed away, the claimant argued a lot with her sister. In frustration, the claimant made a comment on her Facebook, "I just want to punch someone in the face. I can't do this anymore. I'm beyond exhausted." (Employer Exhibit One.)

An employee reported the claimant's Facebook comment. The employer assumed the claimant comments referred to another employee since she made the comment during work hours. The claimant became ill shortly after she posted the Facebook comment. When she was hospitalized, the employer informed her she no longer had a job. The claimant understood she had been discharged because she was ill, not because of the Facebook comment that the employer concluded violated the employer's violence in the workplace policy. The claimant did not work after March 6, 2013.

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 employer established business reasons for discharging the claimant. Since the claimant made the Facebook comment at work, the employer understandably concluded the claimant was upset with a co-worker when she made the comment. But this conclusion was not correct. The claimant was upset with her sister after an argument. Since the claimant's father had recently passed away, the claimant was emotional but the evidence does not establish that she had any intention of violating the employer's workplace violence policy. The claimant did not commit work-connected misconduct. She used poor judgment when she expressed her frustration with her sister on Facebook. As of March 10, 2013, the claimant is qualified to receive benefits.

DECISION:

The representative's April 5, 2013 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons, but she did not commit work-connected misconduct. As of March 10, 2013, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs