

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

ANNIE M TWITTY
APT 202
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WATERLOO IA 50703-1821

CARE INITIATIVES
C/O TALX - JOHNSON & ASSOC
PO BOX 6007
OMAHA NE 68106-6007

Appeal Number: 06A-UI-04682-DWT
OC: 04/02/06 R: 03
Claimant: Respondent (1)

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:

Care Initiatives (employer) appealed a representative's April 24, 2006 decision (reference 01) that concluded Annie M. Twitty (claimant) was qualified to receive unemployment insurance benefits, and the employer's account could be charged because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 17, 2006. The claimant participated in the hearing. Jessica Meyer, a representative with TALX, appeared on the employer's behalf with Shanda Shears, the nurse manager, and Theresa Borcherdine, the director of nurses, as witnesses. During the hearing, Employer's 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 enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits, or did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on July 12, 2005, as a certified nursing assistant. The claimant worked an average of 24 hours a week because she also attended school.

The claimant did not work as scheduled between March 17 and 24. The claimant's doctor restricted her from working for a medical reason. On March 24, Borcherdine talked to the claimant and reminded her that she had to personally contact a nurse manager or Borcherdine when she was unable to work as scheduled. The claimant had not contacted the employer anytime between March 17 and 24. Instead, the claimant relied on her doctor sending the employer a statement indicating she was restricted from doing any work these days, which was done.

Borcherdine did not know the claimant left work an hour early on March 24 because she did not feel well. The claimant was next scheduled to work on March 27, 2006. The claimant called and talked to a charge nurse around 12:30 p.m. to report she was unable to work as scheduled at 2:00 p.m. While the claimant understood the charge nurse would notify the nurse manager, neither Shears nor Borcherdine received information that the claimant had called. On March 29, 2006, the claimant reported to work as scheduled. After the claimant arrived at work, a charge nurse told the claimant she was no longer on the schedule. Later that day the claimant talked to another charge nurse to ask why the employer no longer had the claimant on the schedule. This charge nurse told the claimant she had been discharged because she had not called or reported to work. The claimant did not contact a nurse manager, Borcherdine or anyone in the personnel department about her discharge. As of March 29, 2006, the claimant understood the employer had discharged her for attendance issues.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code sections 96.5-1, 2-a. The employer has the burden to establish either the claimant voluntarily quit her employment or that the employer discharged her. Even though the employer asserted the claimant abandoned her employment, a preponderance of the evidence establishes the employer discharged the claimant as of March 29, 2006, for attendance issues.

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).

On March 27, the claimant notified the employer she was unable to work as scheduled, but she only talked to a charge nurse, not a nurse manager or Borcherdine. While the claimant did not talk to the proper person, she contacted the employer to report she was unable to work as scheduled as Borcherdine emphasized to the claimant on March 24. Even though the claimant did not contact the correct person, the evidence indicates the claimant notified the employer on March 27 that she was unable to report to work. Also, even though a charge nurse does not have the authority to discharge an employee, if an employee has been taken off the schedule a charge nurse can reasonably presume a person has been discharged. The employer did not contradict the claimant's testimony that on March 29 she talked to two charge nurses who told her she had been discharged. Even though the claimant did not talk to a nurse manager or Borcherdine on March 29, she reasonably believed a charge nurse would know if she had been discharged. The claimant's reliance on a charge nurse's statement that the claimant had been discharged was reasonable. The evidence shows the claimant was discharged for reasons that do not constitute work-connected misconduct. As of April 2, 2006, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's April 24, 2006 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of April 2, 2006, 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/pjs