

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER A WEST
Claimant

APPEAL NO: 11A-UI-15142-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 10/23/11
Claimant: Respondent (2/R)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's November 14, 2011 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 did not respond to the hearing notice or participate in the hearing. David Williams, a TALX representative, appeared on the employer's behalf. Briana Strum, the administrator, Barb Krebs, a staff registered nurse, and Jodie Schweinebart, a CNA, testified on the employer's behalf. Based on the evidence, the employer's arguments, and the law, the administrative law judge finds the claimant is not 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 June 2009. She worked full time as the director of nursing. Strum became the administrator in March 2011. Strum did not learn about any problems between the claimant and her night staff employees until October 21, 2011.

On October 21, Strum received information that if the claimant's husband called the facility at night when she was not at work, the claimant told staff to tell him she was busy with a resident and would call him back. The claimant also told staff to send her a text message that her husband had called her. If employees did not follow these instructions, the claimant reduced their hours and retaliated by calling those employees to work unusual or holiday hours. Since employees had reported these problems to the previous administrator and nothing had been done, no one initially reported the claimant's directives to Strum.

When Strum got to work on October 24, she talked to several employees who worked at night. These employees confirmed the information Strum had learned about on October 21. When Strum talked to the claimant, she admitted she made the comment reported, but had only meant it as a joke. Based on changes in some employees' scheduled hours that coincided with failing to follow the claimant's directive when her husband called and the claimant's admission that she

had made the comment, the employer concluded the claimant violated the employer's no-harassment policy and the no cell phone usage at work policy. The employer discharged the claimant on October 24, 2011.

The claimant established a claim for benefits during the week of October 23, 2011.

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. 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).

Based on the evidence presented during the hearing, the claimant committed work-connected misconduct by using her authority to retaliate against employees who did not follow her directions about what to do if her husband called her at night when she was not at work. Since the claimant did not participate in the hearing, the employer's evidence is not disputed. The claimant committed work-connected misconduct by using her position of authority and directing employees to violate the employer's cell phone policy. As of October 23, 2011, the claimant is not qualified to receive benefits.

The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment for benefits she has received since October 23, 2011, will be remanded to the Claims Section to determine.

DECISION:

The representative's November 14, 2011 determination (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of October 23, 2011. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs