

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KELLY CHEY**  
Claimant

**APPEAL NO: 14A-UI-03188-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DES MOINES IND COMMUNITY SCH DIST**  
Employer

**OC: 02/23/14**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's March 14, 2014 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for nondisqualifying reasons. The claimant participated at the May 1 hearing with her attorney, Stuart Higgins. Chris Lo, the operations manager for Elderly Care of Iowa, testified on the claimant's behalf. Rhonda Waggoner, the employer's benefits specialist, appeared on the employer's behalf. 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 April 1997. She worked as a full-time high school custodian. The claimant understood the employer's policy required her to timely report any criminal charges.

In 2010 and 2012, background checks were completed on the claimant when she applied to become the guardian and care provider of her parents. Records from DCI were reviewed to determine if the claimant had any criminal record or if her name was on any register. If records from DCI revealed any issues, the claimant would have been banned from becoming a guardian. Instead, a district court judge granted guardianship over her parents.

After a law became effective on July 1, 2013, the employer was required to do background checks on all employees. In January 2014, the claimant gave the employer permission to do a background check on her. Based on the employer's reporting service, IntelliCorp, the employer received information on February 4, that the claimant had a criminal record and she was listed on a registry. When the employer told the claimant she was on a leave of absence as a result of these findings, the claimant asked for more information. She had no knowledge about either

allegation or finding from IntelliCorp. The employer just told the claimant that this matter would be investigated. The employer did not give the claimant any specific information.

On February 20, the employer discharged the claimant falling to report an earlier criminal charge and that her name was on a state registry. As a result of the IntelliCorp report that the claimant was on a registry, the claimant could not work at a high school.

#### **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. Iowa Admin. Code r. 871-24.32(1)(a).

This case revolves on the accuracy of the reporting services. The employer used IntelliCorp and Elderly Care of Iowa relied on records from DCI to determine if the claimant could be granted guardianship of her parents. Since the facts indicate DCI records revealed no problems for the same time period that IntelliCorp reported and a district court judge relied on records from DCI when granting the claimant guardianship of her parents, the DCI records are deemed more reliable than results obtained by IntelliCorp. The claimant's testimony that she had no knowledge about any issues the IntelliCorp record found is credible. As a result, the employer did not establish that the claimant committed work-connected misconduct. As of February 23, 2014, the claimant is qualified to receive benefits.

**DECISION:**

The representative's March 14, 2014 determination (reference 01) is reversed. The employer discharged the claimant for business reasons, but the evidence does not establish that the claimant committed work-connected misconduct. As of February 23, 2014, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css