

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GERALYN A RATZLAFF
Claimant

APPEAL NO. 12A-UI-13091-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 10/07/12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated October 25, 2012, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on December 3, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing with her representative, Katherine Evans. Caroline Semer participated in the hearing on behalf of the employer with witnesses, Kimber Kleven, Carol Sullivan, and Michelle Lawson. Exhibits One through Five were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a certified nursing assistant from December 30, 2009, to October 9, 2012. She was informed and understood that under the employer's work rules, leaving her duty station without permission was prohibited.

On October 9, 2012, the claimant left the facility to go outside. She did not obtain permission to leave the facility. The charge nurse was looking for the claimant and heard the front door close. She discovered the claimant with her coat in hand near the front door. The claimant admitted at that time that she had gone outside for a smoke break.

The claimant had received discipline in the past for policy violations. On February 18, 2011, she was verbally coached for not cooperating with a coworker. She was verbally warned on June 19, 2012, for not properly documenting her completed patient cares. She received a written warning on June 20, 2012, for not properly documenting her completed patient cares. She received a final written warning on June 21, 2012, for not properly documenting her completed patient cares.

The employer discharged the claimant on October 11, 2012, for her work rule violation on October 9, and prior history of discipline.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. Mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not misconduct within the meaning of the statute. 871 IAC 24.32(1).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I believe Sullivan's testimony that she witnessed the claimant coming in the front entry with her coat and that she admitted at that time that she had been outside on a smoke break. I cannot find any reason for Sullivan to make this up. The claimant, on the other hand, knew her job was in jeopardy and had a motivation at the point that she realized that the incident could lead to termination to be untruthful regarding her conduct.

The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. She had been warned repeatedly in the past about following policy. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated October 25, 2012, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css