

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MELISSA L LONG**  
Claimant

**APPEAL NO: 09A-UI-14718-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**COMFORT INN**  
Employer

**OC: 08/30/09**  
**Claimant: Respondent (1/R)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

Comfort Inn (claimant) appealed a representative's September 21, 2009 decision (reference 01) that concluded Melissa L. Long (claimant) was qualified to receive benefits based on the reasons for her employment separation with the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 29, 2009. The claimant did not respond to the hearing notice or participate in the hearing. Sara Wood, the assistant manager, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Did the employer discharge the claimant for work-connected misconduct?

**FINDINGS OF FACT:**

The employer hired the claimant to work as a part-time housekeeper. On days the claimant was scheduled to work, she began at 8:00 a.m. If an employee is unable to work as scheduled, the employer requires employees to call two hours before the scheduled shift.

The claimant was scheduled to start working on June 30, 2009. The claimant notified the employer she was unable to work because she had been at the emergency room all night. The head housekeeper asked the claimant to bring a doctor's note verifying she had been at the emergency room. The claimant reported to work as scheduled on July 1, 2009. The claimant was scheduled to work on July 5, but she notified the employer she was unable to work because she had to take a child to the emergency room. On July 7, the claimant was scheduled to work. She did not call the employer until 10:00 a.m. to report she was unable to work. The claimant reported for work at 10:45 a.m. instead of 8:00 a.m. as scheduled. The claimant had been at the Department of Human Services that morning. The claimant brought in a doctor statement for her June 30 absence. The employer sent the claimant home after she reported to work on July 7 because the employer already had her rooms covered.

On July 14, the claimant called to report she was again unable to work because she had to take her children to the emergency room. The employer asked her to report to work when she was finished at the emergency room. At 11:00 a.m., the claimant called the employer to report she would not be able to work that day because she was still at the emergency room. The employer then told the claimant she was discharged because of on-going attendance issues.

#### **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 section 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).

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).

The employer established compelling business reasons for discharging the claimant. After the employer hired the claimant, she was not a dependable or reliable employee. Since the claimant was either sick herself and had to take her sick children to the hospital for treatment, she did not intentionally fail to work as scheduled. Instead, she was unable to work and tried to notify the employer when she was unable to work. The evidence does not establish that the claimant intentionally disregarded the employer's interests by failing to report to work as scheduled. Therefore, she did not commit work-connected misconduct. As of August 30, 2009, the claimant is not disqualified from receiving benefits based on this employment separation.

The employer is not one of the claimant's base period employers. Therefore during the claimant's current benefit year, the employer's account will not be charged.

The record indicates the claimant was disqualified from receiving benefits based on an employment separation from another employer. However, it appears she has requalified since that separation occurred. The issue of whether the claimant has earned requalifying wages, ten times her weekly benefits, is remanded to the Claim's Section to determine.

**DECISION:**

The representative's September 21, 2009 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of August 30, 2009, the claimant is not disqualified from receiving benefits based on this employment separation. The employer's account will not be charged during the claimant's current benefit year. An issue of whether the claimant has requalified by earning ten times her weekly benefits since she had a disqualifying separation is remanded to the Claims Section to determine.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs