

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NANCY L FLOREA**  
Claimant

**APPEAL NO. 11A-UI-06974-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PINNACLE HEALTH FACILITIES XVII**  
Employer

**OC: 05/01/11**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's May 20, 2011 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because the claimant had been discharged for disqualifying reasons. The claimant participated in the hearing with her attorney, Katie Naset. Ashley Diderick, a nurse supervisor, and Jessica Green, the administrator, 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 August 2010. She worked full-time as a night CNA. During her employment, the claimant received two written warnings: the wheelchair incident that the director of nursing wrote up on March 2 and one on the morning of April 16, 2011. Prior to being sent home early on April 16, the claimant had no idea her job was in jeopardy.

The claimant did not know about or receive a disciplinary report completed by M.L., an L.P.N., on April 13. M. L. concluded the claimant had not done her job after it had been reported there were several residents in wet beds. A.R., an R.N., gave the claimant a written warning and sent her home early the morning of April 16. A.R. concluded the claimant was not taking care of residents as her job required her to do based on the report of another CNA. The morning of April 16, the claimant had not done any rounds yet when another CNA told her she could go on a break.

The claimant gave the director of nursing a written statement on April 19 to explain the personal issues she was dealing with at the time. On April 29, the claimant called the director of nursing to find out why she was not on the schedule to work. The claimant then learned she had been

discharged. Later, the claimant received information she had been discharged because of repeated performance 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 § 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).

In this case, the employer had a difficult time explaining why the claimant had been discharged, because the director of nursing who discharged the claimant no longer works for the employer and no one who had any part in the decisions to discharge the claimant participated in the hearing. Also, the former director of nursing did not leave any documentation explaining why the claimant was discharged. Even though the employer was in a difficult position, the employer is still required to establish the reasons for the claimant's employment separation.

Based on reports from other employees and written warnings in her personnel file, the employer believed the claimant did not get any written warning about her job performance until February 2011. The claimant acknowledged that during her employment she received two warnings that the employer showed to her and she signed. The first written warning occurred because the claimant did not clean wheelchairs she had been assigned to clean. The claimant, however, could not leave the unit to get the wheelchairs and no one brought her the wheelchairs so she could clean them. The last incident occurred when the employer sent the claimant home after another CNA reported the claimant had not taken care of some residents' sanitary needs.

The facts do not establish the claimant had any idea her job was in jeopardy. After the claimant was sent home early on April 16, she confided to the director of nursing the personal problems she was having a hard time dealing with. Even though the employer may have suggested the claimant seek help to handle her personal issues, there is no evidence the director of nursing or the claimant's supervisor talked to her to find out what she had done on April 16 before an employee told her to go on her a break. While the employer may have had several employees complaining about the claimant and how she performed or did not perform her job, no one talked to the claimant in an attempt to find out why employees started complaining in February about the claimant or counseled her on how she could improve her job performance.

The employer may have had compelling business reasons for discharging her, but the facts presented during the hearing do not establish that the claimant intentionally failed to perform her job satisfactorily or that she was so negligent in performing her job that she committed work-connected misconduct. As of May 1, 2011, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

**DECISION:**

The representative's May 20, 2011 determination (reference 01) is reversed. The employer discharged the claimant but did not establish that the claimant committed work-connected misconduct. As of May 1, 2011, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw