

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DIANA L ZUMWALT
Claimant

APPEAL NO. 08A-UI-10104-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GENESIS HEALTH SYSTEM
Employer

**OC: 09/28/08 R: 04
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated October 20, 2008, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on November 14, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Craig Fields participated in the hearing on behalf of the employer. Exhibits A through E were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as a medical assistant from August 14, 2006, to September 29, 2008. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled. She was warned regarding attendance on July 18, 2007. She also received a corrective action on December 5, 2007, for attendance.

On September 2, 2008, the claimant was informed that her husband had cancer and required treatment. On September 3, 2008, she applied for intermittent leave under the Family and Medical Leave Act (FMLA) due to her husband's medical problems. The employer granted the claimant intermittent leave under FMLA from September 4, 2008, through March 4, 2009, based on medical certification that it would be necessary for the claimant to be absent to care for her husband and transport him to medical appointments.

The claimant was absent from work with proper notice to the employer on September 10 and 11, 2008. She was unable to work because the stress associated with the cancer diagnosis caused the claimant to be unable to sleep. She was absent with proper notice to the employer on September 22. She was unable to work because both she and her husband were ill. The claimant was absent with proper notice to the employer on September 24 because her husband was ill and she needed to care for him.

The claimant reported to work on September 25. She informed her supervisor about her husband's illness, that he was not doing well, and he was not sure he wanted to continue treatment. The supervisor suggested that she leave her husband so that he would grow up and said her husband was being a baby. This infuriated the claimant. She told the supervisor that she did not think that she could stay at work after the supervisor's insensitive comments. The supervisor told her to go ahead and leave and that everything was covered. The claimant followed the supervisor's suggestion and left work.

On September 29, 2008, the employer discharged the claimant for having too many unscheduled absences.

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 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 substantial and 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).

No willful and substantial misconduct has been proven in this case. The claimant's absences were due to legitimate medical reasons and were properly reported. It does not make any difference whether the absences were directly covered by the intermittent FMLA leave.

DECISION:

The unemployment insurance decision dated October 20, 2008, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css