

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

REBECCA R LOSEE
Claimant

APPEAL NO: 12A-UI-03127-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOOD SAMARITAN SOCIETY INC
Employer

OC: 02/12/12
Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's March 23, 2012 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for non-disqualifying reasons. The claimant participated in the hearing. Gwen Musick, the director of nursing, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant 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 March 2010. She worked as a full time CNA. When she was hired, the claimant learned employees could be discharged for excessive unscheduled absences. The employer's policy gives an employee a verbal counseling or warning when the employee has six unscheduled absences within six months. An employee receives a final written warning when the employee has seven unscheduled absences within six months. When an employee has eight unscheduled absences within six months, the employer may suspend or terminate the employee.

The claimant received a final written warning for attendance issues on September 28, 2011. The claimant understood she could not miss any work for a month or she could be discharged. She was absent on November 3, and December 29, 2011, and January 20, 2012, for medical issues. The claimant provided the employer with a doctor's statement for each of these absences verifying she was unable to work due to medical reasons. The claimant properly notified the employer she was ill and unable to work on February 1, 2012. The claimant had fever and flu-like symptoms on February 1, 2012. The claimant saw a doctor, but did not get a doctor's statement. When employees have a fever and flu-like symptoms, the employer does not want the employee to work.

After the claimant called in on February 1, the administrator decided to discharge the claimant because she had 19 unscheduled absences in the last 12 months. On February 3, 2012, the employer informed the claimant she was discharged for ongoing attendance issues.

The claimant established a claim for benefits during the week of February 12, 2012. The claimant filed claims for the weeks ending February 18 through April 21, 2011. The claimant was ill and unable to work on February 22 and March 16, 2012.

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).

The employer established business reasons for discharging the claimant. Even though the claimant had unscheduled absences, she provided a doctor's statement verifying she was unable to work for the majority of her absences. The claimant's absences after September 28 occurred because of medical issues that prevented the claimant from working. She properly notified the employer when she was unable to work, and after September 28 a doctor's statement verified she was unable to work when she called in sick. The claimant has personal medical issues that sometimes resulted in her inability to work. The claimant's absence after September 28 occurred because she was unable to work, not because she intentionally disregarded the employer's interest. The evidence does not establish that the claimant committed work-connected misconduct. As of February 12, 2012, the claimant is qualified to receive benefits.

Each week a claimant files a claim for benefits, she must be able to and available for work. Iowa Code § 96.4(3). Since the claimant was able to and available for work the majority of the week during the weeks ending February 25 and March 17, 2012, she is eligible to receive partial benefits for these weeks.

DECISION:

The representative's March 23, 2012 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As for February 12, 2012, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Even though the claimant was ill one day during the weeks ending February 25 and March 17, she was able to and available to work the majority of these weeks. Therefore, she is eligible to receive benefits for these weeks.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw