

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

NICOLE K TROTTER
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DES MOINES IA 50313-3431

SCOTTISH RITE PARK INC
2909 WOODLAND AVE
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Appeal Number: 06A-UI-04539-DWT
OC: 04/02/06 R: 02
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Nicole K. Trotter (claimant) appealed a representative's April 25, 2006 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Scottish Rite Park, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 11, 2006. The claimant participated in the hearing with her representative, Teresa Jones. Nicole Hammer, a human resource administrative assistant, Kim Vanderheiden, the director of nursing, and Dee Parkhill appeared on the employer's behalf. During the hearing Claimant's Exhibits A through G were offered and admitted as evidence. Based on the evidence, the arguments of the parties, 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 claimant started working for the employer on September 22, 2003. The claimant worked as a full-time certified nursing assistant. The employer scheduled the claimant to work 6:30 a.m. to 3:00 p.m. The employer's policy informs employees about the employer's progressive disciplinary policy when there is an attendance issue. (Claimant's Exhibit D.)

During her employment, Vanderheiden talked to the claimant about her attendance because she was reporting to work late. On March 30, Vanderheiden saw the claimant talking on her cell phone and told her she was violating the employer's policy. (Claimant's Exhibit F.) The claimant understood the employer's policy allowed employees to use cell phones during lunch or on a break. The claimant thought it would be all right to use her cell phone if there was an emergency, such as her children's school calling.

On April 5, the claimant left work early without punching out or receiving permission to leave early. Vanderheiden learned the claimant left work early about 3:45 p.m. that afternoon. When Vanderheiden called and talked to the claimant around 4:00 p.m., the claimant explained that she left because of an emergency with her child. The claimant acknowledged she had only told other CNAs she was leaving. The claimant believed she had punched out, but the employer did not have a record of her doing so. The claimant left between 1:00 and 1:30 p.m. after she received a call from her child's school that her child had a high fever.

After talking to the claimant, the employer learned she had left work early on March 29, 31, April 2 and April 3. The claimant left work these days about 2:00 p.m. The claimant left to pick up her husband from his workplace because they only had one car. The claimant received permission to leave work early at least once from Elaine, a charge nurse. The claimant may have received permission from other charge nurses at other times. When the employer reviewed the claimant's time records, the employer noticed the claimant had been leaving work early since early February. (Claimant's Exhibit A.)

On April 6, the claimant left a training class after she received a call on her cell phone. The claimant's husband called her. The employer concluded the claimant again violated the employer's cell phone policy. Although the next step of the employer's progressive disciplinary policy for violating the employer's cell phone policy was a written warning (Employer's Exhibit G), the employer had already decided to discharge the claimant for the leaving work early without permission or punching out on April 5.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharged 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 compelling business reasons for discharging the claimant. The claimant not only left work early without permission on April 5, but she had been leaving work early since early February. The claimant left work early primarily to pick up her husband from his workplace. Even though the employer has the ability to monitor employees' timecards and records, the employer did not do so with the claimant. Prior to April 5, the claimant had no idea her job was in jeopardy even though she left work for unexcused reasons. While the claimant used poor judgment by frequently leaving work before the end of her shift, she had no idea her job was in jeopardy for doing this. Prior to April 5, the employer had only given the claimant a verbal warning for reporting to work late.

On March 30, Vanderheiden reminded the claimant she was not allowed to use her cell phone in the hallway. Vanderheiden said this is passing, but documented this as a verbal warning. On April 6, when the claimant's husband called her cell phone while she was in training class and the claimant left the room to go to the restroom, the employer did not give the claimant a written warning for a second cell phone offense because the employer had already decided to discharge the claimant.

Prior to April 5, the claimant had no realization her job was in jeopardy. Even though the claimant's repeatedly leaving work early to pick up her husband from work was uncalled for, the claimant had no reason to think her job was in jeopardy because she had been doing this since early February. The employer had the opportunity to ask the claimant before April 5 why she left work early. On April 5 was a different situation. On April 5, the claimant left work early because her children were sick and she had to pick them up from school. Her failure to contact a charge nurse this day was understandable under these circumstances. Even though co-workers did not have the authority to give the claimant permission to leave, the claimant did not try to hide the fact she left work early.

After carefully reviewing the evidence, the facts do not establish that the claimant intentionally disregarded the employer's interests. Although the claimant's actions, especially leaving work early to pick up her husband from work, are not condoned, the facts do not establish that the claimant committed work-connected misconduct. Therefore, as of April 2, 2006, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's April 25, 2006 decision (reference 01) is reversed. The employer discharged the claimant for compelling business reasons that do not constitute work-connected

misconduct. As of April 2, 2006, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kkf