

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRACY A BAKKUM
Claimant

APPEAL NO. 110-UI-14031-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CEDAR FALLS LUTHERAN HOME
FOR THE AGED**
Employer

**OC: 05/29/11
Claimant: Appellant (2)**

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Tracy Bakkum appealed an unemployment insurance decision dated August 9, 2011, reference 02, that concluded she was discharged for misconduct. A telephone hearing was held on November 28, 2011. The claimant participated in the hearing. Holly Bierstedt participated in the hearing on behalf of the employer. Exhibits One through Five were admitted into evidence at the hearing.

ISSUE:

Was Ms. Bakkum discharged for work-connected misconduct?

FINDINGS OF FACT:

Tracy Bakkum worked for Cedar Falls Lutheran Home for the Aged as a full-time certified nursing assistant from July 2, 2010, to November 29, 2010. Bakkum 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 and were subject to disciplinary action after three days of unexcused absences during 180 days.

On October 4, 2010, Bakkum was warned after she was absent July 9, was late July 22, was absent due to a dental emergency August 16, was absent due to family emergency August 30, was late September 6, and left work early September 18. She was suspended October 11 after she was absent with proper notice to the employer October 6, 7, and 8 due to legitimate illness.

Bakkum left work five minutes early November 4 and was absent November 5 due her father having a heart attack. She did not call in properly to report her absence. She was absent from work on November 19 because her father died. She attended her father's funeral on November 22 with proper notice to the employer and was absent.

On November 25, Bakkum went to her car to go to work and discovered that someone had shot the passenger side window out of her car. She called more than two hours before the start of

her shift and reported that she would not be reporting to work due to the vandalism to her car. She had to wait for the police to arrive to take a report and had to get the window fixed.

After working on November 29, Bakkum was discharged for excessive unexcused absenteeism.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether Ms. Bakkum 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 section 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).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past acts. The termination of employment must be based on a current act. See 871 IAC 24.32(8). In this case, whether considered alone or in conjunction with her prior conduct, willful and substantial misconduct has not been proven in this case. Ms. Bakkum had an emergency beyond her control that caused her to miss work on November 25 and she properly notified the employer about the absence. While the employer may have been justified in discharging Ms. Bakkum, work-connected misconduct as defined by the unemployment insurance law has not been established.

DECISION:

The unemployment insurance decision dated August 9, 2011, reference 02, decision is reversed. Tracy Bakkum is eligible for benefits, provided she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css