

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RHONDA L ABENDROTH**  
Claimant

**APPEAL NO: 09A-UI-18240-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE IOWA ODD FELLOWS  
AND ORPHANS HOME – MASON CTY**  
Employer

**Original Claim: 11/08/09  
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The claimant appealed a representative's December 2, 2009 decision (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. A telephone hearing was held on January 13, 2009. The claimant participated in the hearing with her attorney, Megan Fluharty. The employer did not respond to the hearing notice or participate in the hearing. Based on the evidence, the arguments of the claimant, 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 worked 13 years for the employer as a full-time CNA. The claimant knew the employer required employees to take random drug tests. During her employment, the claimant took three or four drug tests. They were all negative.

On November 3, 2009, the employer randomly chose the claimant to take a drug test. The claimant had just started her break and gone to the restroom before she learned about the drug test. The claimant tried but could not produce a urine sample for the test even though she drank a lot of liquid. At the end of her shift, 2:00 p.m., she still could not provide a urine sample and went home. The employer called the claimant and asked her to come back to provide a sample. The claimant came back at 4:00 p.m.

When the claimant went back, an employee saw her provide a urine sample. This person told the claimant that the initial results looked good, but the employer would have to send the sample to a lab to test.

On November 6, 2009, the employer discharged the claimant because they received reports she asked other employees to provide a urine sample for drug test and the employer did not like

her attitude. Prior to November 3, 2009, the claimant did not remember when she had received either a verbal or written warning. As far as the claimant knew, her job was not in jeopardy.

**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 may have had business reasons for discharging the claimant. The evidence presented during the hearing does not establish that the claimant committed work-connected misconduct. The claimant denied she asked anyone to provide a urine sample for her drug test. Even if the claimant talked to employees about providing a urine sample for her drug test, she provided her own urine sample for the test. The employer did not establish that the claimant committed work-connected misconduct. As of November 8, 2009, the claimant is qualified to receive benefits.

**DECISION:**

The representative's December 2, 2009 decision (reference 01) is reversed. The employer discharged the claimant, but did not establish that she committed work-connected misconduct. As of November 8, 2009, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw