

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

JODY L HAPARANTA
218 ALMA DR NW
CEDAR RAPIDS IA 52405

JEFFREY M AKEY PC
240 WILEY BLVD SW #C
CEDAR RAPIDS IA 52404-1319

Appeal Number: 06A-UI-01082-SWT
OC: 12/25/05 R: 03
Claimant: Respondent (1)

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:

The employer appealed an unemployment insurance decision dated January 17, 2006, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on March 3, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing. Jeffrey Akey participated in the hearing on behalf of the employer with witnesses, Tina Fox, Kathy Weineth, and Evelyn Rutledge. Exhibits One and Two were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked for the employer from June 2, 2002, to January 9, 2006. She began working as a dental hygienist starting July 14, 2002.

In September 2005, a patient who had her teeth cleaned by the claimant became dissatisfied because the claimant shifted the patient's head to where she wanted it and seemed impatient when the patient's head moved or her mouth was not open enough. She sent a letter complaining about this to the employer on December 6, 2005.

Another patient felt the claimant treated her too roughly during a teeth cleaning sometime during the summer of 2005. Her son felt the same way about the teeth cleaning he had received around the same time and objected to his mother about the claimant cleaning his teeth again on December 27, 2005. The mother cancelled the appointment.

On December 12, 2005, Jeffrey Akey, D.D.S., the owner of the dental practice, received the letter dated December 6, 2005. On December 27, 2005, he learned about the mother canceling her son's dental appointment because the claimant had been rough in cleaning his teeth in the past.

Akey decided to terminate the claimant because of the complaints about her past treatment of patients while cleaning their teeth. Akey had never counseled, warned, or otherwise disciplined the claimant about rough treatment of patients during dental cleaning. No patients had complained directly to the claimant about how she treated them. The claimant did not deliberately treat patients roughly and believed that she was being thorough in cleaning patient's teeth.

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.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a, (8) provide:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of

recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand 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 to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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 the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. All of the allegations of rough treatment of patients happened several months before the claimant was discharged. Under the circumstances, it is significant that the claimant was never warned about rough treatment of patients. In the absence of warnings, the conduct fails in to the category of unsatisfactory conduct that was not willful in nature.

DECISION:

The unemployment insurance decision dated January 17, 2006, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

saw/tjc