

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATHLEEN A ELLIOT
Claimant

APPEAL NO. 10A-UI-02474-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SUNNYBROOK ASSISTED LIVING INC
Employer

OC: 01/17/10
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated February 3, 2010, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on March 30, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. Shelley Bechtel participated in the hearing on behalf of the employer with witness, Katie Lineau.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked as an assistant cook for the employer from April 30, 2009, to January 17, 2010. She was warned on December 28, 2009, after the administrator found that she had only included six biscuits for biscuits and gravy served to the 12 patients in the dementia unit. The claimant believed the half biscuit per patient was ample for the meal. The administrator also warned her about proper kitchen cleanup.

The claimant worked on January 17, 2010, with the main cook. The claimant was the designated cook for the day. She and the other cook had divided the cleanup duties, with the claimant doing the dishes and the other cook doing the sweeping. The next day, the employees on duty found that there was a lot of food left on the floor under tables and appliances. The claimant was held responsible because she was the designated cook. The claimant was unaware of the inadequate sweeping by the other cook.

The employer discharged the claimant on January 18, 2010, for not making sure the kitchen and dishroom were properly cleaned before leaving work.

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.

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 the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. No willful and substantial misconduct has been proven in this case. No repeated negligence equaling willful misconduct has been shown either. At most the evidence shows unsatisfactory work performance, which does not meet the standard of disqualifying misconduct.

DECISION:

The unemployment insurance decision dated February 3, 2010, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs