

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ASHLEY E DRAKE**  
Claimant

**APPEAL NO. 11A-UI-07584-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JOHN E CAMPBELL DDS PC**  
Employer

**OC: 05/01/11  
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's June 1, 2011 determination (reference 02) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for non-disqualifying reasons. The claimant participated in the hearing. John Campbell, DDS, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

**ISSUE:**

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The employer hired the claimant on April 6, 2011, to work as a full-time dental assistant. The claimant understood the employer initially hired her as a 90-day probationary employee.

On April 20, the employer's dental hygienist talked to the claimant and indicated she needed to make some improvements in her work performance. Co-workers complained that the claimant asked them to help her do a full set of x-rays because she was nervous doing them, which prevented them from performing their work. The claimant made mistakes when setting up instruments for various procedures. The employee who normally set up the trays corrected the claimant's mistakes. After the claimant did not set the time clock correctly two times to mix cement for permanent crowns, the employer mixed the cement himself.

Even though the dental hygienist talked to the claimant on April 20 about improving her work performance, the claimant asked for time off to go to an out-of-town wedding on April 29. The employer was upset after learning the claimant did not go out of town for the wedding until the next day. The employer believed the claimant should have been at working trying to improve her work performance since she was in town.

When the claimant called in sick on May 2, the employer told her she was not working out and discharged her. The employer was not satisfied with the claimant's job performance and she was not making the progress the employer expected from her.

**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).

Even though the claimant tried to do her job, the employer was not satisfied with her work performance. The purpose of a 90-day probationary period is to give an employer and the employee an opportunity to see if a newly hired employee fits in and is capable of performing the job. In this case, the employer was not satisfied with the claimant's work performance even though she worked less than a month. The employer established justifiable business reasons for discharging the claimant. Even though the employer was not satisfied with the claimant's work performance, the claimant did not intentionally fail to perform her job satisfactorily. The evidence does not establish that the claimant committed work-connected misconduct. Therefore, as of May 1, 2011, she is qualified to receive benefits.

The employer is not one of the claimant's base period employers. During her current benefit year, the employer's account will not be charged.

**DECISION:**

The representative's June 1, 2011 determination (reference 02) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of May 1, 2011, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. During the claimant's current benefit year, the employer's account will not be charged.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw