

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVE L KULEE
Claimant

APPEAL NO. 13A-UI-11897-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DEVELOPMENTAL SERVICES OF IOWA
Employer

OC: 09/22/13
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated October 14, 2013, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on November 4, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Karla Bond participated in the hearing on behalf of the employer. Exhibit One was admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as a direct support professional July 27, 2012, to September 9, 2013. The employer provides direct support to individuals with mental disabilities. The claimant was informed to report any suspicion of abuse to the Department of Human Services within 24 hours, to take immediate action to ensure the safety of a client who the employee reasonably believes was subjected to abuse, and to report the allegation to a supervisor.

On September 9, 2013, at about 10 minutes before the claimant's shift was to end, a client told the claimant that another client had touched his butt. He checked on the client who was alleged to have had contact with his housemate and discovered that the client was sleeping. The claimant then got busy getting the rest of the clients ready for bed before the end of this shift. As a result, he neglected to inform the oncoming staff or a supervisor about what the client had alleged or document the allegation.

The next morning, the client again told a staff person about the housemate's improper contact with him. The claimant was brought in on the morning of September 10 and he admitted that he had forgotten to notify a supervisor about the improper conduct by the housemate. He prepared a report of what the client had told him that morning. He was suspended on September 10 and discharged on September 24, 2013, for neglecting to report the September 9 incident.

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 § 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, 11 (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 misconduct has been proven. Instead, negligence has been shown. In Henry v. Iowa Department of Job Service, 391 N.W.2d 731 (Iowa App. 1986), the Court of Appeals ruled that a single act of negligence is not disqualifying misconduct.

DECISION:

The unemployment insurance decision dated October 14, 2013, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs