

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JANE A STUCKER**  
Claimant

**APPEAL NO. 11A-UI-05130-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MOSAIC**  
Employer

**OC: 03/20/11  
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Jane Stucker filed an appeal from a representative's decision dated April 13, 2011, reference 01, which denied benefits based on her separation from Mosaic. After due notice was issued, a hearing was held by telephone on May 12, 2011. Ms. Stucker participated personally. The employer participated by Deb Grant, Human Resources Manager; Jim Poehlman, Executive Director; Valerie Ipsen, Program Coordinator; and Pam Geslicki, Direct Support Manager. The employer was represented by Tom Kuiper of Talx Corporation. Exhibits One through Eight were admitted on the employer's behalf.

**ISSUE:**

At issue in this matter is whether Ms. Stucker was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Stucker was employed by Mosaic from June 29, 2007 until March 24, 2011 as a full-time direct support specialist. The employer provides services to individuals with mental health issues. Ms. Stucker performed services in a group home setting. She was discharged from the employment due to her conduct on March 16, 2011.

On March 16, Beverly, one of the residents, was on suicide watch, which required that she be checked at 15-minute intervals. At approximately 8:00 p.m., when it was time to dispense medications, Ms. Stucker knocked on Beverly's door but did not get a response. She entered the room but did not get any response after calling Beverly's name several times. She turned the volume up and down on Beverly's radio but still got no response. She asked a coworker if he would try to get a response. He went into the room and blew a whistle but there was still no response. At that point, Ms. Stucker pulled the fire alarm in an attempt to get Beverly to respond.

After the alarm was pulled, Ms. Stucker returned to Beverly's room and indicated an ambulance might be needed. She checked Beverly's color and respiration and determined that an

ambulance would not be necessary. At about this time, Beverly became responsive. She filed a written grievance concerning the incident on March 17. Ms. Stucker was suspended on March 18 pending an investigation.

During the investigation, it was learned that one of the residents had said “tonight we thought Beverly was dead.” The employer’s investigative report indicates that some of the other residents became involved in trying to get a response from Beverly because of fear for her. Ms. Stucker provided her written account of what happened on March 23. It was determined that she had acted inappropriately by changing the volume on the radio and pulling the fire alarm. As a result, she was discharged on March 24, 2011. The only prior disciplinary action against Ms. Stucker was on October 13, 2009 when she received a verbal counseling after a resident complained about her tone of voice.

**REASONING AND CONCLUSIONS OF LAW:**

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code § 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). For reasons that follow, it is concluded that the employer has failed to satisfy its burden of proof. Ms. Stucker was discharged because she turned the resident’s radio up and pulled the fire alarm in an effort to get a response from her. The administrative law judge is satisfied that these actions were not intended to force Beverly to take medication but to make sure she was okay in light of the suicide watch. Even other residents expressed concern for her well-being that night.

It was not Ms. Stucker’s intent to disregard the employer’s interests or standards. She was only intending to make sure Beverly had not harmed herself. At most, she may have used poor judgment in her choice of steps to get a response. However, an isolated instance of poor judgment does not constitute disqualifying misconduct. See 871 IAC 24.32(1). It was certainly the employer’s prerogative to discharge Ms. Stucker. However, conduct that might warrant a discharge will not necessarily support a disqualification from benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons stated herein, benefits are allowed.

**DECISION:**

The representative’s decision dated April 13, 2011, reference 01, is hereby reversed. Ms. Stucker was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided she is otherwise eligible.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/pjs