

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONNA M PURSCCELL
Claimant

APPEAL NO. 11A-UI-05955-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GENESIS DEVELOPMENT
Employer

OC: 03/27/11

Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Donna M. Purscell (claimant) appealed a representative's April 25, 2011 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Genesis Development (employer). After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on June 1, 2011. The claimant participated in the hearing. Janet Moore appeared on the employer's behalf. During the hearing, Employer's Exhibits One through Four were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

After a prior period of employment with the employer, the claimant most recently started working for the employer on October 19, 2010. She worked part time (30 – 35 hours per week) as a community support staff (CSS) worker in one of the employer's group homes providing assistance to persons with disabilities. Her last day of work was March 28, 2011. The employer discharged her on that date. The stated reason for the discharge was failure to make a required timely report of suspected abuse.

Community support staff workers are "mandatory reporters" of suspected abuse under the law. Both under the law and under the employer's policies, of which the claimant had been given notice and training and to which she had access, a mandatory reporter who has a good-faith suspicion that dependent adult abuse has occurred must make a report of that suspicion within 24 hours. Failure to do so can result in criminal liability, and is a ground for immediate discharge.

On March 26 the claimant reported to another group home's team leader, as well as to her own group home's team leader, that her roommate, who was a CSS worker at the other group home, had two weeks earlier admitted having inappropriate sexual contact with a resident in that other group home. The claimant indicated she did not report the allegation immediately because the roommate was a frequent liar and she wanted to have some physical proof before making a report. However, she saw physical proof about a week prior to March 26 in the form of hickeys on the roommate's neck, which the roommate acknowledged were from the resident, and the claimant still delayed making a report until March 26 after a further confrontation with the roommate in which the claimant forced the roommate to move out.

As a result of the seriousness of the violation of failing to make a prompt report of suspected adult abuse, the employer discharged the claimant.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's failure to promptly report the suspected adult abuse shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's April 25, 2011 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of March 28, 2011. This disqualification continues until the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw