

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRANDY SANCHEZ
Claimant

APPEAL NO: 09A-UI-14687-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

TENCO INDUSTRIES INC
Employer

OC: 09-06-09
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 24, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 27 and continued October 28, 2009. The claimant participated in the hearing. Joni Lundy, Human Resources Coordinator and Sue Heller, Residential Instructor, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time residential instructor for Tenco Industries from September 27, 2004 to August 7, 2008. On August 5, 2008, the claimant was at work when Residential Instructor Sue Heller arrived for her overnight shift at 9:30 p.m. She knocked on the side door where she usually entered and which was usually unlocked, but found the door locked and the dead-bolt in place as well when she tried to unlock it. She “knocked and banged” on that door for four or five minutes before going to the front door which was also locked and dead bolted. She “banged” on that door about five minutes before the claimant opened the door. She was surprised because her schedule indicated she was replacing Ashley Coopridier but the claimant opened the door and said, “Why are you here?” and Ms. Heller said, “Why are you here.” Ms. Heller said she was scheduled to work at 9:30 p.m. and the claimant said her schedule was in her car. Ms. Heller said they needed to call Supervisor Angie Phillips. Ms. Phillips stated Ms. Heller was scheduled to work and the claimant needed to leave. After they hung up Ms. Heller noticed the dishes were not done and the laundry had not been started. She asked the claimant why the guys were in bed and the claimant said she put them to bed at 9:00 p.m. Ms. Heller asked her why she did that when some of them take their medication at 9:00 p.m. and need to take it with a snack. The claimant said she and Ms. Coopridier put them to bed at 9:00 p.m. Ms. Heller asked if they had taken their medication and went in to one room and saw one consumer lying on top of his covers with his clothes on. He was also supposed to have an oxygen mask on and the claimant said she could not remember how to put it on.

Ms. Heller made it clear to the claimant she should not have let the men go to bed that way and she needed to have one use the restroom before bedtime and the claimant said he would not go. Ms. Heller testified that residential instructors are supposed to continually direct the consumer until he used the restroom. She asked the claimant if the consumers were given their medication and she said she did not know. Ms. Heller called Ms. Phillips and said the claimant did not know if the consumers received their medication and while she was on the phone the claimant said she did give it to them. Ms. Heller told her she was supposed to sign off and asked her why she could not remember if she just did it. Ms. Heller was also calling about the dishes and laundry. She told the claimant that one consumer never went to bed before she got there because he liked to see her and have ice cream and the claimant said he wanted to go to bed. Ms. Phillips asked why the claimant was still there and Ms. Heller said she was helping her get one of the consumers up and Ms. Phillips told her to do it by herself and the claimant needed to leave. The claimant said she could not leave until Ms. Heller moved her car. Ms. Heller was not aware she parked behind the claimant because the employer has another residential home across the street from where Ms. Heller's mother lives and Ms. Heller saw a green Neon parked in front of that house and assumed that was the claimant's car. The same car was in the street the evening of August 5, 2008. She moved her car from the driveway and the claimant entered a car in the driveway and left. In the meantime Ms. Phillips called Ms. Coopriider to ask why she had not performed her required tasks and she said the claimant showed up and told her to leave at 8:50 p.m. and said she would do her work. When Ms. Heller went back inside the side door of the house she locked the door and went to lock the front door when she heard a man's voice, a stranger, say, "Where did she go? Why did she leave me? She told me she would be back to get me." He had emerged from the closet in the staff bedroom and Ms. Heller asked him who he was and what he was doing in the house? She told him he had no right to be there. He continued to state that Ms. Coopriider invited him and Ms. Heller said she left a long time ago and he needed to talk to her supervisor. When Ms. Heller called Ms. Phillips and told her there was a man in the house and she needed to talk to him he reluctantly got on the phone and originally said Ms. Coopriider invited him and told him to stay there and she would be back to get him. He then started saying the claimant invited him and told him to stay there and she was his girlfriend. Ms. Phillips told him to stay at the house but he ran outside. Ms. Phillips told Ms. Heller she was on her way over and had called the police. Ms. Phillips arrived and they waited for the police but when the police arrived they told the employer they could not do anything because the man said he was invited into the house. Ms. Phillips attempted to call the claimant and Ms. Coopriider several times but could not reach either one of them. Ms. Heller and Ms. Phillips waited for the man to return for his car and after waiting approximately two hours they turned out the lights and he came back. They confronted him but he would not say who he was there to see and then almost hit them with his car in an effort to get away. On August 7, 2008, the employer met with the claimant and Ms. Coopriider individually. The claimant denied being the one to invite him there, denied knowing anything about him being there and said she never saw him there or knew him. The claimant had completed her time card and indicated she worked 3:00 p.m. to 7:00 p.m. that day. Ms. Coopriider denied knowing anything about the situation either and the employer terminated both of their employment August 7, 2008.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which 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. On the other hand 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.

The employer terminated the claimant's employment because she was still at the house even though she was not scheduled; the doors were dead bolted; it took the claimant at least 10 minutes to unlock the door; the regular chores had not been completed; her answers to Ms. Heller and Ms. Phillips were vague; after she left the man stated her name and said she invited him to the house and she was his girlfriend; and she was previously warned about receiving personal phone calls on the house phone in violation of the employer's policy. It is very suspicious that the claimant locked and dead bolted the door. While she usually locked the door it was rare for her to use the dead bolt because employees do not have keys to that lock. The claimant did not explain why the chores were not done or why the consumers were in bed so early. She couldn't remember if she gave them their medication. Additionally, Ms. Heller saw the same car the man was driving at another residence when the claimant was working and assumed she purchased a new car making the claimant's denial of knowing him less than credible. It seems more likely that Ms. Heller interrupted a planned rendezvous between the claimant and the man and because he had been at a home she previously worked at her testimony on the subject is not credible. The administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

DECISION:

The September 24, 2009, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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