

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FARID K FALTAS
Claimant

APPEAL NO. 07O-UI-08494-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DEVELOPMENTAL RESOURCES INC
Employer

OC: 05/20/07 R: 02
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Farid K. Faltas (claimant) appealed a representative's June 14, 2007 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Developmental Resources, Inc., doing business as Chrysalis (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 19, 2007. The claimant participated in the hearing. Sonney Hickman appeared on the employer's behalf and presented testimony from one other witness, Michelle Thompson. 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 June 6, 2005. He worked full time as a certified medication aide (CMA) on the second shift in the employer's group homes for persons with developmental disabilities. His last day of work was May 15, 2007. The employer discharged him on May 18, 2007. The reason asserted for the discharge was an alleged inappropriate interaction with a client.

The claimant was at a group home on May 15; at approximately 8:00 p.m., he administered medication to a resident "Daniel" and took the blood pressure of another resident "Carla." During this time, Daniel was trying to get an item he wanted away from Carla who was holding it in her hand, and she was resisting. Daniel told Carla to "shut up." The claimant told Daniel that was not a nice thing for him to say. Daniel then left to return to his room, and Carla returned to her activities. The claimant proceeded with his other duties, and left the facility about 45 minutes later.

On May 16 Ms. Thompson, the health services coordinator, received a report from the site supervisor that the site supervisor had received a report from two aides at the location, as well as from Carla. Their report was that when Daniel said "shut up," the claimant had grabbed his arm and pushed it down onto the table, causing Daniel to say, "Ouch." They further reported that that claimant had then turned to Carla and said, "Shh." Daniel later exhibited a 4-inch red mark on his arm and stated that the "nurse hurt him." The employer understood that one of the aides claimed to

have been in the room when the incident occurred, and that the other aide came in later and saw the mark. The claimant denied contacting Daniel other than for purposes of administering medication, denied grabbing or pushing Daniel's arm, and denied saying "shh" to Carla. He further asserted that the one aide who supposedly had been in the area during the occurrence had not been in the area when Daniel and Carla were having their dispute, but had only come in after the fact to get Carla for her other activities. He further noted that there was no mention made of any red mark on Daniel during the remaining time the claimant was at the facility that evening.

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). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

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 focus of the definition of misconduct is on acts or omissions by a claimant that "rise to the level of being deliberate, intentional or culpable." Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
 - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
 - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
 - a. Manifest equal culpability, wrongful intent or evil design; or
 - b. Show an intentional and substantial disregard of:
 1. The employer's interest, or
 2. The employee's duties and obligations to the employer.

Henry, supra. The reason cited by the employer for discharging the claimant is the alleged inappropriate interaction with Daniel. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not established by a preponderance of the evidence that the incident occurred as alleged. The claimant denied the negative contact attributed to him. No first-hand witness was available at the hearing to provide testimony to the contrary under oath and subject to cross-examination. The employer relies exclusively on the second- or third-hand account from the two aides and resident through the site supervisor; however, without that information being provided first-hand, the administrative law judge is unable to ascertain whether any of those witnesses might have been mistaken, whether they actually observed the incident itself, whether they are credible, or whether the employer's witness might have misinterpreted or misunderstood aspects of the reports. Under the circumstances of this case, the administrative law judge concludes that the claimant's testimony is more credible. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's June 14, 2007 decision (reference 01) is reversed. The employer did discharge the claimant, but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw