

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TANYIA S FERMANDO**  
Claimant

**APPEAL NO. 11A-UI-12939-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**COMPREHENSIVE SYSTEMS INC**  
Employer

**OC:09/11/11  
Claimant: Appellant (1)**

Section 96.5-2-A – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a decision of a representative dated September 29, 2011, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on October 24, 2011. Claimant participated. Employer participated by Sheryl Heyenga, Program Director/Assistant Personnel Director; Kelly Hinders, Unit Manager; Bobbie Jo Putney, Assistant Unit Manager; and Amanda Burris, Staff Development. The record consists of the testimony of Sheryl Heyenga; the testimony of Amanda Burris; the testimony of Bobbie Jo Putney; the testimony of Tanyia Fernando; and Employer's Exhibits 1-39.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer provides residential, vocational and day services for individuals with intellectual disabilities. The claimant was hired on April 2010, as a direct service support staff member. She would go to homes of consumers and provides training on independent living. The claimant was a part-time employee. Her last day of work was September 6, 2011. She was terminated on September 7, 2011.

The incident that led to the claimant's termination occurred on September 4, 2011. Amanda Burris, one of the claimant's supervisors, came to the resident at approximately 3:00 p.m. She found the claimant sitting in a rocking chair looking at some data books. The claimant was supposed to be doing recreation with her consumers. The claimant then left the unit and went downstairs to get some food that was being delivered by a friend of hers. The claimant did not notify a supervisor before leaving the unit. She was gone approximately five minutes. By leaving the unit and leaving consumers unsupervised, the claimant violated the required staff to

consumer ratio that must be followed. The staff to consumer ratio is necessary to ensure the safety of the consumers.

The claimant had had a staff to consumer ratio violation the day before, on September 3, 2011. She left the area with the lunch cart. She should have taken a consumer with her when she did that. The claimant was reprimanded and reminded again of the staff to consumer ratio.

The claimant had received a three-day suspension on July 29, 2011, after being inappropriate in front of consumers by using foul language. (Exhibit 9) At that time she was informed that her job was in jeopardy. (Exhibit 9) Any further breach of company policies or procedures would result in termination. (Exhibit 9) The claimant had a two-day suspension for excessive staff errors on February 3, 2011. (Exhibit 15)

### **REASONING AND CONCLUSIONS OF LAW:**

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. An employer is entitled to have reasonable work rules and policies and can expect that employees will follow those rules and policies. The employer has the burden of proof to show misconduct.

The greater weight of the evidence established that the claimant violated the staff to consumer ratio on both September 3, 2011, and September 4, 2011. One of the employer's most fundamental requirements is that employees maintain the appropriate staff to consumer ratio. This ratio is necessary to protect the safety of the individuals for whom the claimant is providing supervision. On September 4, 2011, the claimant did not start the recreation time at 3:00 p.m. as required. She then compounded this mistake by actually leaving the unit and going to the door to get food being delivered by a friend. She was gone for approximately five minutes and did not notify a supervisor that she was leaving for a break. The claimant had just been reminded about the staff to consumer ratio the day before.

The claimant had received verbal warnings; written warnings; and suspensions previously for rules violations and not implementing her programs. The claimant knew her job was in jeopardy when she received a three day suspension on July 29, 2011. Any further violation of the rules would lead to termination. The claimant elected to deliberately leave the unit to get food and did not request permission for a break on September 4, 2011. The administrative law judge concludes that this is a serious violation of the employer's policies and constitutes misconduct. Benefits are denied.

**DECISION:**

The decision of the representative dated September 29, 2011, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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