

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CARI A ROSS
Claimant

APPEAL NO: 13A-UI-05848-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BARTELS LUTHERAN HOME
Employer

OC: 04/21/13
Claimant: Respondent (1)

Iowa Code 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's May 7, 2013 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated in the hearing. Brenda Schmadeke, Carol Brown, the human resource coordinator, and Cindy Guyer, the health services manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on March 20, 2013. The employer hired the claimant to work as a full-time CNA, providing personal and physical care to residents. When the employer hired the claimant, they gave her instructions on how to handle aggressive residents. The employer does not train their employees to use the Mandt technique.

On April 15, a co-worker reported that claimant held down a resident's shoulders who had tried to sit up after the claimant asked the resident to lie down on a bed. The co-worker did not feel the claimant acted appropriately or in accordance with the employer's policy.

The employer investigated the report and asked the claimant to demonstrate what she did when she had a difficult resident. The claimant indicated that she would hold a resident's hands. The employer concluded the claimant used the Mandt technique, which the employer did not want used. The employer trained employee to block and step away and approach a difficult resident later. The employer did not believe another co-worker showed the claimant what to do with a difficult resident.

The employer decided to discharge the claimant after concluding she had held a resident when the resident would not follow what she wanted the resident to do. When the employer hired her, the employer told the claimant she must follow residents' wishes and was not allowed to make a resident follow her wishes. The employer discharged the claimant on April 17, 2013.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The employer discharged the claimant for justifiable business reasons after concluding she used a technique for aggressive residents that the employer does not use at its facility. Even though the employer concluded that none of the employees working for the employer showed the claimant the technique she had demonstrated, the claimant's testimony is credible. After working less than a month, the employer concluded the claimant was not a "good fit" for the employer's residents and ended her employment. While the claimant did not harm the resident, the employer concluded the claimant failed to use the employer's block and retreat technique. The evidence does not establish that the claimant committed work-connected misconduct. As of April 21, 2013, the claimant is qualified to receive benefits.

The employer is not one of the claimant's base period employers. During the claimant's current benefit year, the employer's account will not be charged.

DECISION:

The representative's May 7, 2013 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of April 21, 2013, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. During the claimant's current benefit year, the employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs