

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SOPHIA L CARTWRIGHT
Claimant

APPEAL NO: 11A-UI-15750-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DEVELOPMENTAL SERVICES OF IOWA
Employer

**OC: 10/30/11
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's November 29, 2011 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 non-disqualifying reasons. The claimant participated in the hearing. Jennifer Bogarz, the human resource manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds 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 in March 2010. She worked as a full-time direct support professional.

The employer gave the claimant a warning in mid-May 2011 for swearing at a co-worker where clients could hear her. In May 2011, the claimant was upset with a co-worker and swore at the co-worker. The claimant was in an area where clients could overhear her remarks. After receiving the warning, the claimant understood that if she swore at work again, she could be discharged. The claimant also understood that if she left the house she had been assigned to work at, she was to take her client with her.

The claimant worked at three different houses for the employer. She started working at the most recent location in July or August 2011. The claimant tried to take the lead role by helping the other employees. The claimant understood that she had no problems getting along with her co-workers and they had no problems or issues with one another.

On September 29, an employee reported that the claimant swore at a resident after the resident told the claimant to shut up. The claimant allegedly told the resident to "shut the f__ up." On September 29, a resident had been verbally abusive toward the claimant. The claimant expressed her frustration about this resident in private to a co-worker, M. The claimant told M.

that she was tired of being punched everyday by this resident and that supervisors did not support her. The client was not present when the claimant expressed her frustration to M.

As a result of the employee's report that claimant swore in the presence of a client, the employer suspended the claimant on October 3. The employer informed the claimant the employer had to investigate some complaints about her. During the employer's investigation another employee also reported the claimant used profanity at work. The employer also learned that the claimant and another employee left work sometimes to get something to eat or to run errands. The claimant acknowledged she left one time when her client was sleeping. She asked a co-worker to watch her client while the claimant was gone. The claimant thought she was gone about ten minutes. Although the claimant acknowledged she left the house or work only one time, the employer received reports that the claimant did this a number of times.

Based on the information received from employees between September 29 and October 7, the employer discharged the claimant on October 7. The employer discharged the claimant for swearing at work in the presence of a client and for leaving a client at the house when she left to get some food at a fast food restaurant.

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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

Based on the information employees reported, the employer established justifiable business reasons for discharging the claimant. The claimant denied that she swore in the presence of a client in late September. Since the claimant's testimony is credible, it must be given more weight than the employer's reliance on hearsay information from employees who did not testify at the hearing. The facts support the fact the claimant was upset with a resident and the claimant expressed her frustration to a co-worker. The client was not present when the claimant talked to a co-worker. The evidence does support the employer's assertion that the claimant swore in the presence of a client in late September.

The other reason the employer discharged the claimant was because she left the house without her client to get some food. The one time the claimant admitted she left, her client was sleeping. Only after a co-worker agreed to check on the client while the claimant was gone, did

the claimant leave for a few minutes to pick up some food. There were no problems during the claimant's absence. In this instance, the claimant used poor judgment. She knew she was not to leave the house unless she had her client with her, but she did. Even though the employer received reports the claimant left the house more than once, the employees who reported this did not testify at the hearing. Again, the claimant's testimony must be given more weight than the employer's reliance on hearsay information. Based on the one time the claimant left work, the employer did not establish that the claimant committed work-connected misconduct. As of October 30, 2011, the claimant is qualified to receive benefits.

DECISION:

The representative's November 29, 2011 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of October 30, 2011, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw