

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBRA V HYER
Claimant

APPEAL NO. 12A-UI-03280-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOOD SAMARITAN SOCIETY INC
Employer

OC: 02/12/12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated March 22, 2012, reference 01, which denied unemployment insurance benefits. After due notice was issued, a telephone hearing was held on April 17, 2012. The claimant participated and testified. Participating as a witness for the claimant was Ralph Hyer, the claimant's husband and former dishwasher for the employer. The employer participated by Mr. David Williams, hearing representative, and witnesses Karen Mousel, administrator, and Connie Schachterle.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Debra Hyer was employed by Good Samaritan Society, Inc. from May 30, 2003, until her discharge on February 17, 2012. Ms. Hyer held the position of director of dietary services and was employed full-time. The claimant was paid by the hour. Her immediate supervisor was Karen Mousel.

Debra Hyer was discharged after the employer concluded she had violated state laws regarding mandatory reporting of suspected abuse and company policy by failing to inform the employer of rumors of abuse. Ms. Hyer had been informed of an allegation made by a CNA regarding unusual circumstances surrounding the death of a resident. The claimant was aware that under the state laws and policy procedures, she was required to make a report of any suspected abuse or mistreatment. Ms. Hyer considered reporting the matter but did not do so. Subsequently, the claimant discussed the statements at home in the presence of family members. The rumor of suspected abuse spread and was reported to state authorities as suspected abuse. The employer was first informed of the allegation by a state surveyor. When questioned about the matter prior to her discharge, Ms. Hyer agreed that she "should have" immediately reported the matter and admitted she had thought about doing so. Ms. Hyer also admitted speaking about the matter at home in the presence of her adult son and his wife.

Because the claimant had not reported the suspected abuse to her supervisor or the facility's administrator, although she was aware of it and had spoken to two other individuals, a decision was made to terminate Ms. Hyer from her employment.

It is the claimant position that she basically does not recall most of the incidents leading up to her discharge. It is the claimant's belief, however, the information provided to her by her husband on the job was "rumor" only.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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 has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. The focus is on deliberate or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa App. 1992).

In this matter, the evidence establishes that the claimant was aware of company policy and regulatory requirements that anything that could be considered to be possible abuse or neglect must be reported to a worker's immediate supervisor or the facility's administrator as soon as possible. The claimant had attended mandatory reporting training and had completed the training. Ms. Hyer was discharged after it was determined that another employee had informed the claimant of rumors of highly unusual circumstances surrounding a resident's death but the claimant had not reported the matter to the administrator as required. The evidence establishes that Ms. Hyer was aware of the unusual nature of the allegations and that the claimant admitted to the employer that she knew she should have reported it and considered doing so but did not. The evidence further establishes that Ms. Hyer openly discussed the matter at home and that those conversations resulted in the matter being reported to the state surveyor by yet another individual. During this time, the employer was unaware of the allegations and did not know them until the state surveyor contacted the employer.

The administrative law judge concludes, based upon the evidence in the record, that the employer has sustained its burden of proof in establishing the claimant's discharge took place under disqualifying conditions. The claimant knew or should have known that failing to report suspected abuse as a mandatory reporter could result in her termination from employment. Benefits are withheld.

DECISION:

The representative's decision dated March 22, 2012, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw