

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHELLE M FOLSOM
Claimant

APPEAL NO. 10A-UI-10325-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABCM CORPORATION
Employer

OC: 05/23/10
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Disciplinary Suspension/Misconduct

STATEMENT OF THE CASE:

Michelle Folsom (claimant) appealed a representative's July 12, 2010 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was placed on disciplinary suspension with ABCM Corporation (employer) for violation of a company rule. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 7, 2010. The claimant participated personally. The employer participated by Craig Allen, Administrator.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 16, 2007, as a full-time certified nursing assistant. The claimant signed for receipt of the employer's handbook. She also received training regarding Dependent Adult Abuse. The employer did not issue the claimant any warnings regarding her performance during her employment.

On May 24, 2010, the claimant was performing a complete bed change when a resident grabbed the claimant's arm, digging fingernails into the claimant's skin. The claimant was caught unaware. The claimant tried talking to the resident, prying the resident's fingers from the claimant's arm and listened for someone to help her in the hall. The claimant could not reach the call light. The claimant's training did not cover this circumstance. The claimant grabbed the resident's arm with her hand so the claimant could pull away from the resident. The claimant immediately proceeded to the nurse to explain the situation and seek first aid for her bleeding. The nurse checked the resident and found no injuries. The resident did not remember the incident. The nurse tended to the claimant's wounds.

On May 24, 2010, the employer suspended the claimant pending investigation. The claimant's actions left a bruise on the resident. On July 27, 2010, the State of Iowa found the allegations to be unfounded and could not think of any other way the claimant could have released the

resident's grip. The claimant repeatedly tried to reach the employer. She was successful on August 17, 2010. The administrator told the claimant she was terminated because the incident "set a bad tone" and the claimant was "not a good fit."

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code § 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 establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer did not provide sufficient evidence of job-related misconduct. The employer could not testify to any actions the claimant should have taken to release the resident's grip. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's July 12, 2010 decision (reference 01) is reversed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css