

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CODY A KINNEY
Claimant

APPEAL NO: 14A-UI-06378-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IA DEPT OF HUMAN SVCS/GLENWOOD
Employer

OC: 05/18/14
Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's June 12, 2014 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 at the July 14 hearing. Sam Krauss, a representative with Employers Edge, appeared on the employer's behalf. Karen Roenfeld, a program administrator, and Nate Hurley, a resident treatment employee, testified on the employer's behalf, Pam Sipe and Heath Sayers observed the hearing. During the hearing, Employer Exhibits One through Four were offered and admitted as evidence. 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 in November 2009. The claimant worked as a full-time resident treatment employee. Sayers supervised him.

During his employment, the claimant received some written warnings. On May 31, 2012, the claimant received a written warning for using his cell phone at work which is a violation of the employer's policies. (Employer Exhibit Four.) On February 20, 2013, the employer informed the claimant he was receiving a three-day suspension for failing to document medications he had passed and because he had not been truthful during the employer's investigation. (Employer Exhibit Three.) On March 1, 2013, the employer gave the claimant another three-day suspension for failing to fully cooperate in an investigation by failing to give the employer his cell phone as requested. (Employer Exhibit Two.)

On March 13, 2014, the claimant was assigned to work one hall and Hurley the other hall. When the claimant was helping a resident get ready for bed, Hurley came to the door to tell the resident good night. The resident became combative about putting on his pajamas and he started hitting the claimant. This type of behavior was not unusual for this resident.

The claimant blocked the resident's punches by turning his body. Hurley saw this exchange from the doorway. When the resident calmed down, Hurley left. The claimant tried to give the resident his shorts. The resident jerked the shorts out of the claimant's hand and fell backwards. The resident hit his head on the bed railing. The claimant looked at the resident's head and noted an abrasion on his forehead, but it was not bleeding. The claimant then left the resident to take care of another matter. When he returned, the claimant noticed the resident was bleeding from the abrasion. The claimant called the nurse to take care of the bleeding.

When the claimant left the resident, the resident left his room. Hurley saw the resident and asked him what happened. The resident indicated the claimant had done this to him. Hurley concluded the claimant had physically abused the resident.

As a result of this incident, the claimant was suspended with pay from March 14 to April 1. He was then suspended without pay from April 2 to 8 and suspended with pay on April 9 and 10.

During the investigation, Hurley reported the claimant had pushed the resident against a wall after the resident started hitting him. Since the claimant had not fully cooperated in previous investigations, (See Employer Exhibits Two and Three), the employer concluded that he again was not truthful when he initially told Hurley he did not know how the resident injured himself, but told the investigator the resident had fallen backwards and hit his head on a bedrail. The employer concluded the claimant abused the resident in the presence of Hurley when the claimant backed the resident to a wall and took a boxer's stance. The employer discharged the claimant on April 10, 2014. (Employer Exhibit One.)

The claimant established a claim for benefits during the week of May 18, 2014. He has filed weekly claims since May 18, 2014.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him 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).

This case revolves around the credibility of the claimant and Hurley. If Hurley's testimony is credible, the claimant committed work-connected misconduct. If the claimant's testimony is credible, he did not commit work-connected misconduct.

The facts establish that even though the claimant has received some written warnings, he has not received any warnings for failing to treat residents with dignity and respect. He has worked a number of years and knew how this resident could become aggressive and start hitting people. The claimant recognized that the resident frequently hit people. As a result the claimant had no reason to become upset when the resident started hitting him on March 13. It is noteworthy that Hurley did not report the exchange that he testified occurred between the claimant and the resident until the resident had an injury. No one knows exactly how the resident injured himself except the claimant and the resident. Even by Hurley's testimony, both the claimant and the resident were calm when he left. The evidence does not establish that the claimant's testimony about how the resident became injured is not correct. Based on the claimant's years of service, his familiarity with residents and Hurley's failure to immediately report any alleged abuse – threatening or physical leads me to the conclusion that the claimant's version of the March 13 is more credible than Hurley's version.

The employer discharged the claimant for business reasons, but the evidence does not establish that the claimant committed work-connected misconduct. Therefore as of May 18, 2014, the claimant is qualified to receive benefits.

DECISION:

The representative's June 12, 2014 determination (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of May 18, 2014, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs