

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**MARTHA ROUSH  
PO BOX 295  
204 W 2<sup>ND</sup> ST APT 2  
WALLAKE IA 51446**

**BETHANY LUTHERAN  
ATTN CINDY SCHECHINGER  
7 ELLIOTT ST  
COUNCIL BLUFFS IA 51503**

**Appeal Number: 06A-UI-00148-BT  
OC: 11/27/05 R: 01  
Claimant: Respondent (1)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96 5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Bethany Lutheran Home, Inc. (employer) appealed an unemployment insurance decision dated December 23, 2005, reference 01, which held that Marsha Roush (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 23, 2006. The claimant participated in the hearing. The employer participated through Cindy Schechinger, Human Resources Coordinator and Pam Jensen, Dietary Manager.

#### 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 employed as a full-time kitchen worker from May 12, 2004 through November 29, 2005. She was terminated for repeated disruptive behavior. The claimant was generally loud and had numerous emotional outbursts. She was involved in a verbal altercation with a co-employee on January 26, 2005 regarding her failure to find a food cart. On January 27, 2005, she had to be told to stop banging trays and other items in the dish room. The employer held a resolution meeting with the claimant on January 31, 2005 and mandated her to attend the Employee Assistance Program. No further problems were documented until she spilled a pan of gravy on September 14, 2005 and disrupted the work routine. A written warning was issued to her on September 20, 2005 for again making loud noises. She was sent home on November 8, 2005 because she was ill and vomiting but she complained about being sent home when she returned to work on the following day. On November 21, 2005, the claimant went to the dietary supervisor and complained about how the new staff was being trained. On November 29, 2005, the claimant's co-worker was in tears over how she was being treated by the claimant. That same day the claimant refused to follow the nurse's directives with regard to filling an order and made inappropriate comments to the nursing staff.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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 claimant was discharged for repeated disruptive behavior. Although the claimant had problems getting along with others, working quietly and working as a team member, there is insufficient evidence establishing that she acted intentionally. Additionally, the employer could have provided disciplinary warnings advising her that her job was in jeopardy which may have prompted her to get along better with others. Work-connected misconduct as defined by the unemployment insurance law has not been established in this case and benefits are allowed.

DECISION:

The unemployment insurance decision dated December 23, 2005, reference 01, is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

sdb/tjc