

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BARBARA J SALLACH

Claimant

APPEAL NO: 10A-UI-04688-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOOD SAMARITAN SOCIETY INC

Employer

OC: 02/14/10

Claimant: Respondent (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed a representative's March 15, 2010 decision (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. A telephone hearing was held on May 4, 2010. The claimant participated in the hearing. Janice Foote, and Lynn Stanley appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on March 15, 1996. The claimant worked as a full-time charge nurse. The claimant understood a physician's order was needed to use a soft restraint on a resident.

On January 30, 2010, the claimant worked on the Alzheimer's unit. She did not realize she was scheduled to work on the unit. As a result, she was unable to familiarize herself with residents' needs on this unit before she began this shift. The claimant was short-handed in the Alzheimer's unit and was told she could not expect anyone to help her.

After a resident took her prescribed medication, she was agitated. The resident even head butted the claimant. The claimant still had meds to give to other residents. She gave the resident orange juice and cookies in an attempt to calm her. While the claimant tried to calm this resident down, she checked on a CNA who was in the bathroom with another resident to see if she needed any help.

The claimant did not give the agitated resident any other medication, even though the resident had other medication she could take as needed. The claimant did not want to overmedicate the resident. The resident had a physician's order for a lap buddy. That morning, the resident had

a sweater in her wheelchair. The claimant knew this resident had a history of falling. The claimant was worried that if the resident stood up, the sweater would fall to the floor which could make the resident trip and fall. Instead of taking the sweater away from the resident, which could have further agitated the resident; the claimant put the sweater around the resident's waist and pulled the arms of the sweater through to the back of the wheelchair. She then wrapped the arms of the sweater around a strap at the back of the wheel chair. The resident had the sweater around her waist for about an hour while the claimant passed meds to other residents.

The employer considered the sweater a soft restraint. Since the claimant did not obtain a physician's order to use a soft restraint and had other methods of resolving the issues with this resident, the employer suspended the claimant on February 1 without pay and discharged her on March 18, 2010. The employer concluded the claimant violated the employer's restraint policy and the resident's rights.

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 section 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).

The facts establish the claimant did not consider the sweater as a soft restraint because the resident could stand up in her wheelchair if she had wanted. Also, the resident could have removed the sweater from her waist and wheelchair if she had wanted. When the employer reviewed the video of the resident, they observed that the resident had not attempted to stand up, but remained in the wheelchair with her lap buddy and the sweater around her waist.

The facts further establish that the claimant's job was not in jeopardy before this incident occurred. On January 30, the claimant may have used poor judgment when she pulled the arms of a sweater to the back of a wheelchair, but the evidence does not establish that she violated the employer's restraint policy. The employer had justifiable business reasons for discharging the claimant. The facts do not, however, establish that the claimant committed work-connected misconduct. As of February 14, 2010, the claimant is qualified to receive benefits.

DECISION:

The representative's March 15, 2010 decision (reference 01) is affirmed. The employer discharged the claimant for justifiable business reasons. The claimant did not commit work-connected misconduct. As of February 14, 2010, 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/pjs