

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NINETTE L MOORMAN
Claimant

APPEAL NO. 12A-UI-07234-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MOSAIC
Employer

OC: 05/20/12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated June 15, 2012, reference 02, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on July 12, 2012. The claimant participated. The employer participated by Ms. Alice Smolsky, Hearing Representative and witnesses, Rhonda Wilcox, Associate Director and Ms. Tammy Fulkerson, Direct Support Coordinator. Employer's Exhibits One, Two, Three and Four and Claimant's Exhibits A and B were received into evidence.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Ninette Moorman was employed b Mosaic from August 22, 2011 until May 22, 2012 when she was discharged from employment. Ms. Moorman was employed as a full-time direct support manager and was paid by the hour. Her immediate supervisor was Tammy Fulkerson.

Mosaic provides direct support to individuals with intellectual disabilities in residential settings. As direct support manager Ms. Moorman was responsible for direct support personnel at a group living home that included seven residents.

Ms. Moorman was discharged when the employer believed that Ms. Moorman had acted inappropriately in handling a resident who was unwilling to remove himself from a urine-soaked bed. Direct support staff and direct support managers are provided training and orientation by the employer. The training includes behavioral strategy classes and instruction on the organization's code of conduct. Individuals caring for residents in the residential homes are expected to follow the individual programs provided for each resident and to utilize alternative assistance if necessary in dealing with problems with residents. Ms. Moorman had attended the

training and had also been warned in the past and placed on a performance improvement plan for the manner in which she dealt with residents.

During the event that caused the claimant's discharge the resident had remained in a chair and subsequently in a urine-soaked bed for a number of hours before Ms. Moorman became involved in attempting to cajole the resident into removing himself from the bed so that the resident's bed and his clothing could be changed. After initially asking the resident to get up and later repeating the directive, Ms. Moorman instructed a staff member to assist her in tilting the resident's mattress up out of the bed frame forcing the resident out of the bed. The employer reasonably considered Ms. Moorman's actions to have jeopardized the resident's well being because of the possibility of injury to the resident. The resident's established program plan instructed staff members to contact an on-call nurse if they had difficulties with the resident. The claimant did not refer to the resident's established program protocol and did not contact the on-call nurse as required prior to attempting to force the resident out of the bed that he was lying in. Ms. Moorman had utilized the services of the on-call nurse in the past and was aware that her services were available.

Based upon the previous warnings that had been served upon Ms. Moorman and her failure to follow reasonable alternatives that were both available and required, a decision was made to terminate Ms. Moorman from her employment with Mosaic.

It is the claimant's position that she did not intent harm to the resident but "forgot" to refer to the resident's personal program plan or to call the nurse when she encountered the ongoing difficulties with the resident in question.

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 insurance benefits. The focus is on culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

The evidence in this case establishes that Ms. Moorman was discharged from her employment with Mosaic based upon her failure to follow reasonable and set procedures in handling a difficult resident who was refusing to leave a urine-soaked bed. The claimant had been provided reasonable training on how to deal with individuals with behavioral issues and a program was in place for the particular individual and instructed Ms. Moorman to contact an on-call nurse if she experienced problems with the individual following directives. Although the claimant had been warned in the past and was aware of the availability of the on-call nurse and the individual's personal program, she did not avail herself of them but instead attempted to force the resident to stand up in effect sliding him off the mattress.

The administrative law judge concludes that the claimant's intention was not to harm the resident but that her failure to follow set procedures demonstrated a disregard for the employer's interests and reasonable standards of behavior that the employer had a right to expect of its employees under the provision of the Iowa Employment Security Law. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated June 15, 2012, reference 02, 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 and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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