

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MANDY N SHAW

Claimant

APPEAL NO: 09A-UI-02856-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CARMELITE SISTERS FOR THE AGED
& INFIRM/KAHL HOME FOR AGED**

Employer

OC: 01/04/09

Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Carmelite Sisters for the Aged & Infirm/Kahl Home for Aged (employer) appealed a representative's February 12, 2009 decision (reference 01) that concluded Mandy N. Shaw (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 18, 2009. The claimant participated in the hearing. Theresa Felger appeared on the employer's behalf. Based on the evidence, the arguments of the parties, a review of the law, and assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on March 9, 2005. She worked full time as a certified nursing aide (CNA) in the employer's long-term care nursing facility. Her last day of work was January 5, 2009. The employer discharged her on that date. The reason asserted for the discharge was an allegation that she had been verbally inappropriate with a resident.

Another CNA reported to a supervisor on December 31 that on December 26 the claimant had been in a room with two residents when one of the residents began to shake her finger at the claimant and telling her to watch her tone and attitude, and that the claimant had responded by going over to the resident and getting face to face with her and loudly telling the resident that she needed to watch her tone and attitude, and that if she wanted to report the claimant, she could. The supervisor reported this to higher management, who sought to investigate the matter. Both of the residents in the room, however, had memory issues, although the resident the coworker alleged had been intimidated by the claimant did respond that she did not like the claimant. There had been no report about the alleged incident to the charge nurse on duty that

day, although when questioned the charge nurse recalled an incident where she heard raised voices from that room.

The claimant denied there had been any incident of any kind between herself and the resident on December 26, and denied there had been any time where she had made any statements to the resident even close to what were alleged by the coworker. She indicated that on December 24 she had some issue with the resident in question where she had gone to rouse the resident because the resident's family was coming to pick her up and had raised her voice so the resident would hear her and get up and get ready. The resident became belligerent toward the claimant who continued to coax and persuade her to get up, and the resident voiced a dislike for the claimant at that time.

The claimant and the coworker who had made the complaint against her had previously had interpersonal conflicts, to the point that the employer had needed to intervene and take action against the two employees.

REASONING AND CONCLUSIONS OF LAW:

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. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is the allegation she had been intimidating and inappropriate toward a resident. The employer relies virtually exclusively on the second-hand account from coworker; however, without that information being provided first-hand, the administrative law judge is unable to ascertain whether the coworker might have been mistaken, whether she actually observed the entire time, or whether she is credible. The claimant's first-hand testimony under oath was credible. The employer has not met its burden

to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's February 12, 2009 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css