

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENIECE ARTERBERRY
Claimant

APPEAL NO. 11A-UI-10977-W

**ADMINISTRATIVE LAW JUDGE
DECISION**

COMMUNITY CARE INC
Employer

OC: 07/17/11
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Employer filed an appeal from a representative's decision dated August 11, 2011, reference 01, which held claimant eligible for unemployment insurance benefits. The following claims were consolidated due to common issues of fact and law: Judy Paulsen (11A-UI-10979), Belinda Sullivan (11A-UI-10978), Deniece Arterberry (11A-UI-10977), and Jewell Thomas (11A-UI-11795). After due notice, an in-person hearing was scheduled for and held on February 10, 2011. The hearing and testimony of Jewel Thomas was performed separately from the other three and was completed on February 10, 2011. The consolidated hearing and testimony of Paulsen, Sullivan, and Arterberry was continued until February 17, 2011 and completed by a telephone conference hearing. Claimants participated through Katie Ervin Carlson, attorney at law. Employer participated through Joe Laverty, attorney at law. Common exhibits were entered for all four cases. Employer Exhibits 1 through 52 were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds: Claimant, Deniece "DeeGee" Arterberry, last worked for employer on July 21, 2011. Claimant was discharged on July 21, 2011 by employer for alleged "inappropriate supervision ... to individuals on second shift, which potentially contributed to an alleged rape on Wednesday, June 15, 2011." The claimant was also blamed for a number of deficiencies in the documentation. Specifically, she was accused of making several significant medication documentation errors. She was accused of not performing consistent controlled substance counts between shifts and failing to get individuals referred for medical treatment in a timely manner.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

871 IAC 24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The gravity of the incident, number of policy violations, and prior warnings are factors considered when analyzing misconduct.

It is not within the scope of the undersigned administrative law judge to determine whether a termination is legal or just. The undersigned is charged with determining whether an employer has proven, by a preponderance of evidence, that an employee committed work-related misconduct. This is a high standard.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct. The employer's allegations at hearing were contrived and, at times, confusing. Prior to termination, the employer did not conduct a thorough investigation. It is apparent that the employer relied, nearly exclusively, upon the DIA investigation. The claimant provided credible responses to all of the specific allegations presented by the employer. The hearsay DIA reports do not outweigh the claimant's firsthand testimony.

The most prominent allegation against this claimant is that she was accused of failing to provide adequate supervision of individuals when a sexual assault occurred on June 15, 2011. To begin with, this allegation was not a current act of misconduct under Iowa law. The alleged misconduct occurred on June 15, 2011. Claimant was not terminated until July 21, 2011. The employer provided no credible explanation about the delay in taking action. In addition, the employer provided no credible evidence about what precisely the claimant did wrong. This was undoubtedly a tragic and unfortunate situation, but it is simply not clear what the claimant could have done differently. None of her conduct in conjunction with this allegation amounts to misconduct.

The evidence reflects that it is possible that, over time, the claimant made some errors in documenting medication delivery, although the exact errors which may have been made by Ms. Arterberry are not entirely clear in this record. To the extent medication documentation errors have been proven, it is found that these errors do not rise to the level of misconduct. The requisite level of intent or disregard for the employer's standards has not been proven.

DECISION:

The representative's decision dated August 11, 2011, reference 01, is affirmed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Joseph L. Walsh
Administrative Law Judge

Decision Dated and Mailed

jlw/kjw