

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LYDIA TAYLOR**  
Claimant

**APPEAL NO. 08A-UI-03127-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BLACK HAWK COUNTY**  
Employer

**OC: 02-24-08 R: 03  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the March 21, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 15, 2008, and continued on April 30, 2008. The claimant participated in the hearing with Resident Counselor Laura Bouck and former Resident Counselor Paula Mott. Amy Landers, Director and June Watkins, Human Resources Director, participated in the hearing on behalf of the employer. Employer's Exhibits One through Eleven were admitted into evidence.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time resident counselor I for Black Hawk County from November 13, 2002 to March 13, 2008. On February 21, 2008, the claimant had a confrontation with a teenage resident after taking the resident's notebook because she felt it contained inappropriate content. Other staff members reported hearing profanity and threats from both the claimant and the resident. The claimant made comments about the resident's mother, called the resident a "slut" and a "bitch" and said, "If we were outside this building you wouldn't be talking to me like this" and said the resident's mother did not care about her (Employer's Exhibit One). Another staff member intervened and stepped between the two and instructed the resident to take a time out (Employer's Exhibit One). The resident went to her room but the claimant continued making inappropriate comments to her as she left (Employer's Exhibit One). The claimant vented to a co-worker and admitted making comments to the resident and said the resident called her a "bitch" and the claimant said, "Where do you think you came from?", and "I bet you wouldn't be talking to me like this if we were outside" (Employer's Exhibit One). The incident was reported to the Department of Human Services. The claimant had been warned about being unprofessional, rude, and disrespectful to residents, co-workers and families on June 18, 2007; July 11, 2007; July 24, 2007; July 26, 2007; received a written warning October 26, 2007; and another verbal counseling February 7, 2008. After investigating the

situation the employer gave the claimant the choice of resigning or being terminated and the claimant chose to resign effective March 13, 2008.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

871 IAC 24.26(21) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

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.

While the resident made inappropriate and disparaging comments about the claimant, the claimant was a professional residential counselor and should have been able to keep her emotions in check rather than respond and actually escalate the situation instead of either walking away or remaining calm with the resident. The claimant had been warned on several

occasions in the past about rude, unprofessional and disrespectful behavior toward residents, co-workers and families and knew or should have known her job was in jeopardy if she continued to exhibit that behavior. Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

**DECISION:**

The March 21, 2008, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/css