

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KATHY L CHITWOOD**

Claimant

**APPEAL NO: 14A-UI-10579-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HEALTHCARE SERVICES GROUP INC**

Employer

**OC: 09/07/14**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Healthcare Services Group, Inc. (employer) appealed a representative's September 29, 2014 decision (reference 01) that concluded Kathy L. Chitwood (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 October 30, 2014. The claimant participated in the hearing. Michael Zacheretti appeared on the employer's behalf. During the hearing, Employer's Exhibits One and Two were entered into evidence. 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?

**OUTCOME:**

Affirmed. Benefits allowed.

**FINDINGS OF FACT:**

The claimant started working for the employer on May 7, 2014. She worked full time as a cook in the employer's Muscatine, Iowa skilled nursing facility. Her last day of work was September 10, 2014. The employer discharged her on September 11, 2014. The reason asserted for the discharge was contributing to an unprofessional and hostile work environment.

The claimant had been having difficulties with a subordinate who had been frequently confrontational with her. The two had been subject of a documented counseling on August 14, 2014, and on August 23 a determination was made that the facility's manager was supposed to be on duty whenever the subordinate was scheduled to work the same shift as the claimant.

On September 10 the claimant and the subordinate were working the same schedule but the facility's manager was not on duty. The subordinate did not follow instructions on a food order and then refused to follow the claimant's instructions to fix the problem. She became confrontational with the claimant, causing the claimant to become tearful and asking another employee to work in the kitchen. The claimant then asked the other employee if the subordinate had been talking about her again.

When the employer became aware that there had been some further disruption on September 10, it discharged both the claimant and the subordinate.

### **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. Rule 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. Rule 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 continued friction between the claimant and the subordinate. It appears that the subordinate was the person responsible for causing the further "scene" on September 10; it is not clear what the claimant did or failed to do that day which might arise to the level of being misconduct. Under the circumstances of this case, the claimant's behavior was at worst ordinary negligence or was a good faith error in judgment or discretion. 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 September 29, 2014 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.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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