

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DONNA M LUND**  
Claimant

**APPEAL NO. 13A-UI-08075-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HANDICAPPED DEVELOPMENT CENTER**  
Employer

**OC: 06/09/13**  
**Claimant: Respondent (2-R)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The employer, Handicapped Development Center (HDC), filed an appeal from a decision dated June 28, 2013, reference 01. The decision allowed benefits to the claimant, Donna Lund. After due notice was issued, a hearing was held by telephone conference call on August 15, 2013. The claimant participated on her own behalf. The employer participated by Program Director Katy Decker and Senior Vice President Lisa Bohland.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.. .

**FINDINGS OF FACT:**

Donna Lund was employed by HDC from September 17, 2007 until June 13, 2013 as a full-time production supervisor. She works with mentally handicapped people who are required to be supervised according to specific policies and procedures. Ms. Lund was trained frequently throughout her employment the appropriate way to interact with the clients.

Her performance evaluation of July 17, 2012, notified her she needed to improve in supervising and instructing clients, to be careful of her voice volume and to refrain from complaining about clients in front of others and publically criticizing clients.

On May 6, 2013, the claimant was given a final written warning and two-day suspension for “yelling” at a client, grabbing parts out their hand and complaining about the client to a co-worker. She was notified her job was in jeopardy if there were any further incidents of this type.

On June 13, 2013, a client struck another client on Ms. Lund’s line. She summoned professional staff to deal with the situation as required. But before the assistance could arrive she went back and confronted the client. The client asserted he had not done anything and Ms. Lund argued with him, saying he had struck another client. Her voice was loud and carrying

and the client became more agitated and raised his fists at her. The professional staffer, Kendra, arrived about that time with the claimant's supervisor, Amy.

The supervisor told the claimant to leave the area, which she did. After dealing with the client Amy and Kendra went to Senior Vice President Lisa Bohland to report the incident. Ms. Bohland then interviewed three witnesses to the event who confirmed Ms. Lund had come back to the agitated client and her voice was raised. Ms. Bohland reviewed the claimant's disciplinary history and discussed the matter with President Michael McAleer. The decision was made to discharge the claimant and she was informed by Ms. Bohland at the end of the day.

Donna Lund has received unemployment benefits since filing a claim with an effective date of June 9, 2013.

### **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.

The claimant had been advised her job was in jeopardy as a result of her inappropriate interactions with clients. She had been informed of exactly what the problems were and that she needed to improve. In spite of the warnings and substantial training on policies, she chose to confront an agitated client and increase his agitation without any legitimate cause. Professional assistance had already been summoned and she knew she was to leave the client to that person rather than confront and challenge him.

The employer is entrusted with proper care of its clients in order to preserve its licensure and to avoid fines imposed by governing bodies. The claimant's conduct was a direct violation of known policies and prior warnings. It caused clients to become more agitated and aggressive which presented additional danger to staff and other clients. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits, even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code section 96.3-7-a, -b.

**DECISION:**

The representative's decision of June 28, 2013, reference 01, is reversed. Donna Lund is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible.

The matter of deciding the amount of the overpayment and whether the amount overpaid should be recovered from the claimant and charged to the employer under Iowa Code section 96.3-7-b is remanded to the Agency.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

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