

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BONNIE SOK**  
Claimant

**APPEAL NO: 10A-UI-09129-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FIVE STAR QUALITY CARE INC**  
Employer

**OC: 05-16-10**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the June 23, 2010, 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 August 12, 2010. The claimant participated in the hearing. Darlene Brown, Human Resources Assistant and Judy Anglen, DON, participated in the hearing on behalf of the employer.

**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 direct support professional for Five Star Quality Care from July 10, 2007 to May 14, 2010. The employer works with mentally retarded clients. On June 19, 2009, the claimant received a written warning for two incidents of failure to show dignity and respect to a client after she yelled at a client to go to his room while he was trying to take his shirt off and then roughly pulled his shirt off over his head herself. Another client wanted to lie down and the claimant “got in his face” and yelled “no.” The client tried to hit her and she grabbed his arm and yelled, “Don’t you do that. I’m through with you. Get out of here.” On January 13, 2010, she received a final written warning and demotion from the position of lead trainer to direct support professional, for failure to show dignity and respect to all clients after she was rude to staff and to a client. The claimant went into the client’s room and said, “What do you want? After the client told her she said, “Well you’re going to have to wait.” On May 13, 2010, DON Judy Anglen overheard the claimant talking to a client in a very loud voice in front of other residents and staff stating, “Why didn’t you tell us you had to go to the bathroom before you wet yourself. We don’t have time to change you every morning.” She then took the client into his room. Any personal body issue is to be handled quietly and with dignity and privacy, especially if a client needs to be changed. The claimant testified she could not recall most of the incidents and that she is losing her hearing in her right ear so she speaks loudly although that was not evident during the hearing.

## 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.

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 received a verbal warning and two written warnings, including a final written warning and demotion, but denied she knew her job was in jeopardy. Additionally, she cannot recall the details of any of the situations she was warned about with the exception of the final incident, which she admits happened in the manner the employer testified it did. While the claimant attributes her using a very loud voice with clients to losing the hearing in her right ear; that was not evident during the hearing as she spoke in a "normal voice throughout. Consequently, 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). Therefore, benefits are denied.

**DECISION:**

The June 23, 2010, 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/pjs