

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GLORIA WEBBER**  
Claimant

**APPEAL NO. 07A-UI-07980-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EXCEPTIONAL PERSONS INC**  
Employer

**OC: 07/01/07 R: 03**  
**Claimant: Respondent (2)**

Section 96.5-2-a – Discharge for Misconduct  
Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

Exceptional Persons, Inc. (employer) appealed an unemployment insurance decision dated August 9, 2007, reference 03, which held that Gloria Weber (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 5, 2007. The claimant participated in the hearing. The employer participated through Angie Tye, Kristen Otto, Pat Crawford and Patty Hammer. Employer's Exhibits One through Six was admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

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

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time supported living staff from April 25, 2007 through July 3, 2007 when she was discharged. The employer provides residential services to individuals with disabilities. That includes assisting individuals with their day-to-day lives and providing 24-hour supervision. The claimant received training on the code of ethics for the direct support services. The primary purpose of her job was to assist people who need support to lead self-directed lives and to participate fully in the community. As a direct support professional, she was responsible for supporting the emotional, physical and personal well being of the individuals receiving support. The claimant was also responsible for protecting and promoting the health, safety, and emotional well-being of the individuals for whom she provided care. Additionally, the claimant completed training and was a mandatory reporter of dependent adult abuse.

She was discharged for an inappropriate verbal and physical interaction with a mentally challenged consumer of the employer's services. On June 29, 2007 at approximately 6:30 a.m., the claimant was working in one of the group homes and was providing care for a female

consumer named Rebecca. An argument ensued between the claimant and Rebecca because she wanted to put more food in her lunch box when there was not enough room. Rebecca became angry and tried to cut the claimant's arm with a butter knife. The claimant then went into the office to speak with co-employee Nancy Werner and showed Ms. Werner the mark on her arm. As they both were leaving the office, Rebecca walked toward them and told the claimant she was mean. The claimant told Rebecca she was mean. Rebecca then slapped the claimant on the arm and the claimant grabbed Rebecca by the neck and then moved her right hand to cup Rebecca's chin and held up her head. Ms. Werner intervened at that point and the claimant turned to go back into the office when Rebecca slapped the claimant on the back. The claimant later called the program manager and said Rebecca tried to cut her and slapped her twice. The program manager talked with Rebecca and then with Ms. Werner who indicated she needed to speak further to the program manager.

Ms. Werner reported the matter to the program manager and completed a written statement. The program manager and the site coordinator met with Rebecca on July 2, 2007. After reassuring Rebecca she was not in trouble, the program manager asked her what had happened with the claimant. Rebecca reported that the claimant grabbed her face and demonstrated the claimant grabbing her neck and then squeezing her cheeks. Rebecca said she and the claimant were always getting into fights and one time the claimant hit her hard on the lips. Rebecca asked for the claimant to be removed from the residential facility. When Rebecca was asked if the claimant touched her when she held up the butter knife, she responded, "lots of times, she hits me back." The employer met with the claimant on July 3, 2007 and while the claimant denies grabbing Rebecca by the neck, she admitted she grabbed Rebecca's hands and shook her saying, "Don't hit me!" Based on the reports received about the verbal and physical exchange, the claimant was terminated. The employer was required to report the alleged abuse to the Department of Inspections and Appeals and the assault was confirmed by that Agency.

The claimant filed a claim for unemployment insurance benefits effective July 1, 2007 and has received benefits after the separation from employment.

#### **REASONING AND CONCLUSIONS OF LAW:**

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

Iowa Code § 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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for having a verbal and physical confrontation with a mentally challenged adult for whom she was providing care. A co-worker stepped between the claimant and the consumer on June 29, 2007 after the claimant grabbed the consumer's neck and then squeezed her face. Although the claimant denies putting her hands on the consumer's neck, she does admit grabbing the consumer's hands and shaking them, which is also inappropriate. The claimant's aggressive response was a willful and material breach of the duties and obligations to the employer and a substantial disregard for the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Iowa Code § 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The unemployment insurance decision dated August 9, 2007, reference 03, is reversed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$2,952.00.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/css