

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CAROLYN A CUNNINGHAM**  
Claimant

**APPEAL NO. 07A-UI-07239-MT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ABCM CORPORATION**  
Employer

**OC: 06/03/07 R: 02  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated July 18, 2007, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on August 22, 2007. Claimant participated personally. Employer participated by Kathy Meyer-Albee, Administrator and Brandy Franke, Certified Nursing Assistant.

**ISSUE:**

The issue in this matter is whether claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on April 10, 2007. Claimant worked as a charge nurse in a care facility which, among other, housed adult mentally retarded persons.

Claimant was discharged on August 20, 2007 by employer because claimant perpetrated abuse on April 10, 2007. Claimant had used bungee cords to lock two mentally retarded residents in their room. Claimant was suspended pending the outcome of a Department of Inspections and Appeals investigation. Upon receipt of a founded abuse decision claimant was finally discharged.

Claimant understood she would be discharged for perpetrating adult abuse.

**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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning abuse. Claimant was warned concerning this policy.

The last incident, which brought about the discharge, fails to constitute misconduct because the incident is too old to constitute a current act of misconduct. Employer knew of the incident on April 10, 2007. Claimant admitted the incident. Employer still delayed a discharge for over four months. This incident is too stale to constitute a current act. The incident is a blatant act of abuse. Discharge should have taken place within a reasonable period of time after discovery. There is no justification for the delay even when claimant was on suspension. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

**DECISION:**

The decision of the representative dated July 18, 2007, reference 01, is affirmed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

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Marlon Mormann  
Administrative Law Judge

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Decision Dated and Mailed

mdm/pjs