

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHARI L BAGBY
Claimant

APPEAL NO: 06A-UI-08076-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**FRIENDS OF FAITH RETIREMENT
HOMES**
Employer

OC: 07/09/06 R: 04
Claimant: Respondent (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated August 3, 2006, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on August 30, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing. Velda Phillips participated in the hearing on behalf of the employer with witnesses, Sharon Holdiman, DeLoy Rainey, and Sue Barnett-Milligan. Exhibits One through Five were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the claimant as a certified nursing assistant (CNA) for the employer from August 16, 1995, to July 11, 2006. The claimant was informed and understood that under the employer's work rules, using obscene or abusive language was grounds for immediate dismissal. The claimant was warned on February 23, 2006, about being rough with residents and making inappropriate comments to residents.

On July 9, 2006, the claimant was using a lift to transfer a resident from a chair to his bed. As she was making the transfer, the resident began slipping from the lift and the claimant was afraid that he was going to fall. She began yelling for help. Four nursing home workers responded and helped get the resident into bed. After the incident, two CNAs reported to management that the claimant had used the words "god damn" and called the resident a "son of a bitch." The reports were untrue. The claimant may have said "oh my God," because she was afraid of the resident getting hurt, but nothing more extreme.

On July 11, 2006, the employer discharged the claimant on July 11, 2006, for violating the employer's work rule prohibiting obscene and abusive language.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant testified credibly and consistently that she did not use the language attributed to her and her testimony under oath outweighs the employer's hearsay evidence to the contrary. No current act of willful or substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated August 3, 2006, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs