

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**MYCHELLE R TURNER  
508 SECOND AVENUE S #1A  
CLINTON IA 52732**

**COMMUNITY CARE INC  
1611 – 330<sup>TH</sup> AVENUE  
CHARLOTTE IA 52731-9682**

**Appeal Number: 04A-UI-00685-BT  
OC: 12/14/03 R: 04  
Claimant: Appellant (1)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

---

(Administrative Law Judge)

---

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Mychelle Turner (claimant) appealed an unemployment insurance decision dated January 12, 2004, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Community Care, Inc. (employer) for work-connected misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 10, 2004. The claimant participated in the hearing along with her husband, Paul Turner. The employer participated through Bill Rose, Robyn Huss and Brook Lee.

#### FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer provides services to persons with disabilities. The claimant was employed as a full-time living assistant from February 27, 2001 through December 15, 2003. The claimant was discharged for her repeated failure to follow directives. In addition to warnings for attendance and committing a medication error, the claimant received numerous warnings for insubordination by failing to follow the employer's directives. She received a written warning on June 20, 2003 for her failure to attend a training class when instructed to attend. There was a meeting held on July 18, 2003 to review the employer's rules since the claimant was having problems following those rules. It was at that time that the claimant was advised that a specific client required constant supervision when in public. This client has some deviant sexual issues and had previously assaulted a child. The claimant received a second warning and a one-day suspension on August 22, 2003 for insubordination by allowing an individual to visit a residence when that person was previously directed not to be there. She received a three-day suspension and additional training after violating the employer's confidentiality policy by disclosing information about a client to her sister, who was dating the client. On December 6, 2003, the claimant was observed to have allowed the client, who needed constant supervision, to go into a gas station alone while she waited in the car. On December 9, 2003, the claimant had the medication keys hanging out in the open when she was supposed to keep those keys secure on her person. One of the clients over whom the claimant was providing care had a habit of unlocking the medication closet and removing items. The claimant was discharged on December 15, 2003.

#### 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 Section 96.5-2-a.

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 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 propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The claimant was discharged for a repeated failure to follow the employer's directives. Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). The claimant contends she was discharged for personal reasons even though she admitted the incidents alleged by the employer actually occurred. The claimant was clearly aware of the rules but chose not to follow them. The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of 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.

#### DECISION:

The unemployment insurance decision dated January 12, 2004, reference 01, is affirmed. 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.

sdb/s