

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KELLI MCARDLE
Claimant

APPEAL NO: 12A-UI-02794-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BETHANY HOME
Employer

OC: 01/29/12
Claimant: Respondent (1)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Bethany Home (employer) appealed an unemployment insurance decision dated March 13, 2012, reference 01, which held that Kelli McArdle (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 April 4, 2012. The claimant participated in the hearing. The employer participated through Administrator Glinda Manternach, Director of Nurses Sue DeMoss and RN/Charge Nurse Brooke Hesel. Employer's Exhibits One through Three were 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 claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

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 certified mediation aide/house supervisor on independent living side from April 30, 2001 through February 1, 2012. She was discharged after multiple disciplinary warnings for disrespectful and inappropriate conduct towards co-workers and sometimes residents and family members. The employer issued her one warning in 2008, two warnings in 2009, and two warnings in 2010 for unacceptable behavior. Additionally, the employer discussed the importance of treating her co-workers with respect in each of her annual performance appraisals. The warnings addressed the claimant using her cell phone while working, talking disrespectfully to a family member and/or co-workers, treating co-workers rudely, swearing, failing to respond to resident's call lights and complaining about how little work her co-workers had performed.

The final incident leading to the discharge occurred on January 29, 2012 when the claimant confronted her co-worker by pointing her finger in the co-worker's face and telling her that no one was allowed to take a smoke break or eat until the claimant was done with her rounds. The

co-worker told the employer in a written statement that the claimant was “crazy, out of her mind – I do believe something is wrong with that lady mentally which is the reason I have just overlooked her “many” different times she is always picking at me, and/or saying smart comments.” The co-worker reported the claimant does not help, pretends to be busy and always walks past lights and states “these are not my residents!” This co-worker was no longer willing to work with the claimant.

The employer was going to offer the claimant a day shift when it met with her on February 1, 2012, but her attitude was so negative that the employer discharged her. The employer stated the claimant was an excellent worker but her attitude and treatment of co-workers was unacceptable.

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 discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The issue is

not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

Misconduct must be substantial in nature to support a disqualification from unemployment benefits. *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1982). The focus is on deliberate, intentional, or culpable acts by the employee. *Id.* The claimant was discharged on February 1, 2012 for repeated inappropriate conduct. She denies clapping her hands behind the other employee and the other employee was not present to testify. The claimant had a long history of inappropriate behavior and had been warned multiple times. However, her final warning prior to discharge occurred in October 2010 and there were no disciplinary warnings issued in 2011. The purpose of a disciplinary warning is let to an employee know their job is in jeopardy if the employee does not make changes in their behavior. In the case herein, the claimant apparently made significant changes as evidenced by the fact that she had no warnings in 14 months. While the employer may have had no other choice but to discharge the claimant, one current incident of inappropriate conduct based on hearsay evidence is insufficient to rise to the level of disqualifying misconduct. Benefits are allowed.

DECISION:

The unemployment insurance decision dated March 13, 2012, reference 01, is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css