

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KILEY C DORSEY**  
Claimant

**APPEAL NO. 11A-UI-12209-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**COVENANT CARE MIDWEST INC**  
**EAGLE POINT**  
Employer

**OC: 08/14/11**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from a representative's decision dated September 8, 2011, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on October 12, 2011. The claimant participated personally. The employer participated by Ms. Letha Dolph, Executive Director.

**ISSUE:**

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having considered the evidence in the record, finds: Kiley Dorsey was employed by Covenant Care Midwest Inc., doing business as Eagle Point Nursing and Rehabilitation, from February 11, 2002 until August 15, 2011 when she was discharged from employment. Ms. Dorsey held the position of housekeeping/laundry supervisor and was paid by salary. The claimant worked full time. Her immediate supervisor was the executive director, Letha Dolph.

Ms. Dorsey was discharged on August 15, 2011 when she was unable to meet the executive director's expectations and was unable to fulfill all the terms of a 60-day action plan that had been implemented on March 21, 2011.

The facility had received an unfavorable inspection report in March 2011 and goals were set for the laundry/housekeeping departments. The action plan was reviewed on June 6, 2011 and at time it was noted that the claimant was making progress and at that time the facility had passed a re-visit from state inspectors.

As part of the action plan Ms. Dorsey was expected to submit checklists regarding resident room cleanliness on a regular basis. Because of other work responsibilities that had been allocated to Ms. Dorsey for maintenance work, Ms. Dorsey had emailed the executive director

explaining that her other new job responsibilities were affecting her ability to submit all reports timely. The final decision was made to terminate the claimant when management determined that the claimant was not at all times correctly calculating the number of hours that she could schedule her employees based upon the ratio of residents. The claimant was attempting to schedule employees as much as possible to meet her employer's expectation and was not aware that at times, the working hours that she was assigning had exceeded the number of hours based upon employer's expectations about a staff/resident ratio formula.

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

The question before the administrative law judge is whether the evidence in the record establishes intentional misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6.2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

In this matter the employer made a management decision to terminate Ms. Dorsey based upon the employer's belief that the claimant was not fulfilling all the expectations that had been given to her in an action plan in June 2011. The evidence in the record establishes that Ms. Dorsey was making significant progress in meeting the employer's expectations but could not meet all the expectations due to some factors that were not within her control. The claimant had been assigned additional maintenance duties in addition to her laundry/housekeeping supervisory responsibilities and had emailed the executive director explaining why some reports or checklists were not being fully submitted. It appears that the claimant was also faced with the dilemma of attempting to meet the employer's increased expectations about laundry and housekeeping performance without exceeding a variable ratio of work hours available based upon the number of the residents in the facility at any particular time. The administrative law judge concludes based upon the totality of the evidence in the record that the claimant was attempting to the best of her ability to perform her duties but could not meet her employer's expectations through no intentional fault of the claimant.

The question in this case is not whether the employer has a right to discharge an employee for these reasons but whether the discharge is disqualifying under the provisions of the Employment Security Law. While the decision to terminate the claimant may have been a sound decision from a management viewpoint, intentional disqualifying misconduct sufficient to disqualify the claimant from the receipt of unemployment insurance benefits has not been shown. Unemployment insurance benefits are allowed providing the claimant meets all other eligibility requirements of Iowa.

**DECISION:**

The representative's decision dated September 8, 2011, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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