

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

CANDY L ALMENDINGER  
2601 SUNNYSIDE AVE  
BURLINGTON IA 52601

RESCARE INC  
c/o MARIE SHEFELBINE  
301 W BURLINGTON ST  
FAIRFIELD IA 52556

Appeal Number: 04A-UI-03207-CT  
OC: 02/22/04 R: 04  
Claimant: Respondent (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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Rescare, Inc. filed an appeal from a representative's decision dated March 18, 2004, reference 01, which held that no disqualification would be imposed regarding Candy Almendinger's separation from employment. After due notice was issued, a hearing was held by telephone on April 14, 2004. Ms. Almendinger participated personally and offered additional testimony from Kerry Robertson and Heather Skogen. Exhibits A and B were admitted on Ms. Almendinger's behalf. The employer participated by Jeri Crile, Human Resources Assistant; Mike Davis, Director of Family and Children's Services; and Joliene Kerby, Administrator, Henry County. Exhibits One through Five were admitted on the employer's behalf.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Almendinger was employed by Rescare, Inc. from February 12, 2003 until February 23, 2004. She began the employment as a service coordinator and became a therapist as of February 1, 2004. She was discharged based on an allegation that she disregarded instructions from her superiors.

On February 13, 2004, Ms. Almendinger received an authorization from the Iowa Department of Human Services (DHS) to perform services for a client. Ms. Almendinger and a coworker spoke with Leigh Welander about the authorization as the amount of time authorized did not appear to be accurate. Ms. Welander suggested that Ms. Almendinger contact the DHS worker to clarify the authorization. Ms. Almendinger indicated she would be meeting with the DHS worker the following Friday and would speak to her at that time. Ms. Welander did not at that time direct Ms. Almendinger to cease all work on the case until the clarification was received. On February 16, Ms. Welander left a voice message for Ms. Almendinger in which she advised her that the authorization needed to be sorted out before she began using up units. Ms. Almendinger had apparently already met with the client in question before receiving Ms. Welander's message. On February 17, Ms. Almendinger was told by Mike Davis that she was not to perform any further work on the case and was to cancel any appointments already scheduled. On February 18, Ms. Almendinger spoke with the DHS worker and was advised that the number of units would remain the same but the time frame for usage would be extended. Ms. Almendinger notified Ms. Welander of the contact and was told to proceed with work on the case.

On February 18, Ms. Welander spoke with the DHS worker and was told the worker would have to check to see if she could extend the time frame for the authorization. The employer believed this statement conflicted with Ms. Almendinger's earlier statement that the extension had already been authorized by the DHS worker. As a result, Ms. Almendinger was removed from the case. She was notified of her discharge February 23, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Almendinger was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Almendinger was discharged for allegedly being insubordinate. It was the employer's contention that she continued to perform services on a case after being directed not to. When the supervisor, Ms. Welander, spoke to her on February 13 she did not tell her not to perform services until the authorization was clarified. In fact, Ms. Welander knew that Ms. Almendinger did not plan to speak to the DHS worker until the following Friday, February 20 (See Exhibit Four). When Ms. Almendinger met with the client on February 16, she had not been told by anyone in management that she should not meet with the client. By the time she met with the client in question on February 18, she had already clarified the authorization from DHS. Moreover, she had received permission from Ms. Welander the morning of February 18 to proceed with work on the case.

The employer's evidence failed to establish that Ms. Almendinger did, in fact, disobey any directive that she not work with the client at issue. Although there may have been some

miscommunication as to what steps she was to take, the evidence does not establish a willful and wanton disregard for the instructions given by supervisors. After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that disqualifying misconduct has not been established by the evidence. While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated March 18, 2004, reference 01, is hereby affirmed. Ms. Almendinger was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/kjf