

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PATSY ASH**  
Claimant

**APPEAL NO: 06A-UI-08663-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**OC: 08/06/06 R: 04**  
**Claimant: Respondent (2)**

Section 96.5-2-a – Discharge for Misconduct  
Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

Care Initiatives (employer) appealed an unemployment insurance decision dated August 24, 2006, reference 01, which held that Patsy Ash (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was on September 14, 2006. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which she could be contacted and, therefore, did not participate. The employer participated through Jim Keldgord, Administrator; Carol Hank, Licensee; and employer representative Jessica Meyer. 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 employer discharged the claimant for work-related misconduct?

**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 part-time cook/dietary aide from August 2, 2002 through August 3, 2006 when she was discharged from employment. The residents of this care facility are sent to eat in the dining room in two groups. There is a resident who usually eats his meal with the second group of residents but when he becomes agitated, he is sometimes sent in with the first group. On August 2, 2006, the resident was very upset and the charge nurse was trying to work with him. She sent him into the dining room to eat with the first group but when he arrived in the dining room, the claimant told him he was not going to eat. The resident became upset and left the dining room heading towards the front door in an attempt to leave the facility. The charge nurse went to talk to the claimant while she sent another staff member after the resident.

The charge nurse told the claimant not to refuse to feed a resident after the charge nurse had specifically sent the resident to the dining room. In front of residents and staff, the claimant loudly argued with the charge nurse and said, "Well, we're the ones who have to do the damn

work.” The charge nurse tried to diffuse the situation and thought that was the end of the matter with the claimant. After several attempts, the resident was willing to go back into the dining room. Before the charge nurse could seat the resident, the claimant grabbed the resident's chair where he usually sits and slammed it into the floor three times before yelling at the resident, “Here's your damn chair – now sit!” The charge nurse directed the claimant to leave the dining room and subsequently prepared a disciplinary report that was given to the director of nurses and administrator. After reading about the incident, the employer determined dependent adult abuse had occurred and reported the matter to the State. The claimant was discharged at that time.

The claimant filed a claim for unemployment insurance benefits effective August 6, 2006 and has received benefits after the separation from employment.

### **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.

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 claimant was discharged for abusive treatment of a resident and inappropriate treatment of a supervisor. It happened not once on August 2, 2006 but a second time even after her supervisor had issued her a warning only moments before. The claimant's conduct 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.

Iowa Code § 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The unemployment insurance decision dated August 24, 2006, reference 01, is reversed. 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. The claimant is overpaid benefits in the amount of \$591.00.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/cs