

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARGARET L KITZMAN**  
Claimant

**APPEAL NO: 14A-UI-11468-D**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OPTIMAE LIFESERVICES INC**  
Employer

**OC: 10/05/14**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Margaret L. Kitzman (claimant) appealed a representative's October 21, 2014 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with Optimae LiveServices, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held on March 25, 2015. The claimant participated in the hearing. Vanessa Weller participated on the part of the employer. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**OUTCOME:**

Reversed. Benefits allowed.

**FINDINGS OF FACT:**

The claimant started working for the employer on April 2, 2012. She worked part time as a community support staff person on an evening shift in the employer's residential unit for persons with disabilities. Her last day of work was September 5, 2014. The employer discharged her on that date. The reason asserted for the discharge was that she had physically intervened in a dispute between two residents.

There were two female residents in the four-plex to which the claimant was assigned who frequently had arguments which threatened to become physical. While the claimant did not have direct responsibility for this resident, the residents of all the units frequently had joint activities, and the issues between these two residents carried over to affecting the other residents. The claimant had asked her supervisor in the past what they were to do if a dispute between the residents became physical, but was given no guidance.

The residents of the four-plex had a joint activity on September 3. While preparing for that activity, the claimant was in a joint hallway as well as the two feuding residents. They were arguing, and the one resident who was more confrontational appeared to be ready to become physical toward the other resident who was much smaller. The claimant stepped between the residents, and sought to cause the confrontational resident to step back. She lifted her arms to put her hands on the resident's shoulders to compel her to step back, but in the process her hand briefly caught the resident's pony tail. The resident then did step back, and the situation was diffused.

The employer learned about the incident. It determined the claimant's physical contact was abuse and a lack of respect toward the resident. It therefore determined to discharge the claimant.

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

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. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, 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 is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is her physical contact with the resident to diffuse the potential physical altercation. While the claimant should have done something other than respond with physical contact herself, she had specifically asked the employer for guidance for what to do about such a situation, and the employer had failed to respond to her inquiry. Under the circumstances of this case, the claimant's action was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided,

the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

**DECISION:**

The representative's October 21, 2014 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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