

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

ALICE N COFFMAN
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CENTERVILLE IA 52544

CARE INITIATIVES
C/O JOHNSON & ASSOCIATES
PO BOX 6007
OMAHA NE 68106-6007

Appeal Number: 04A-UI-02286-SWT
OC 02/01/-4 R 03
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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated February 27, 2004, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on March 25, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing. Roxanne Bekaert participated in the hearing on behalf of the employer. Exhibits One through Five were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked full time for the employer as a certified nursing assistant for the employer from January 9, 2001 to February 3, 2004. The claimant was warned on January 22, 2004, about showing respect and courtesy toward residents after a resident complained that the claimant had said she needed to hold her bladder more if she wanted to go home on a visit and

a family member complained that the claimant would not toilet there resident because she was going off duty. She was warned that further incidents could result in her termination. In regard to the first complaint, the resident had misunderstood what the claimant had said when they were discussing what incontinence pad she should use if she went home. In regard to the second complaint, the claimant had notified another staff member about the family member's request and was trying to avoid incurring overtime, which was in accord with the employer's directives.

On February 3, 2004, a CNA asked the claimant for help with an Alzheimer patient whom she was trying to get to sit on a shower chair. When asked to sit down, the Alzheimer patient kept saying, "Huh, huh, what did you say?" This caused the claimant and the other CNA to raise their voices as they asked him to sit down. The claimant told the resident in a raised voice to let go of her arm so that he was able to sit down on the shower chair. The CNA in the room with the claimant and another CNA, who had overheard the conversation from the hallway, reported that the claimant had mistreated the resident. The employer discharged the claimant for rude treatment of the resident.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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.

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 propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established in this case. No willful and substantial misconduct has been proven in this case. The claimant raised her voice because she thought the resident was not able to hear her.

DECISION:

The unemployment insurance decision dated February 27, 2004, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

saw/kjf