

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DOROTHY FEE
Claimant

APPEAL NO: 10A-UI-10848-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**MCCORKLE INVESTMENTS LTD
CARROLL HEALTH CENTER**
Employer

**OC: 07/04/10
Claimant: Appellant (1)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Dorothy Fee (claimant) appealed an unemployment insurance decision dated July 30, 2010, reference 02, which held that she was not eligible for unemployment insurance benefits because she was discharged from McCorkle Investments, Ltd. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 23, 2010. The claimant participated in the hearing. The employer participated through Administrator Missy McGinnis and Linda King, Director of Nursing. 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 full-time certified nursing assistant from March 23, 2007 through July 7, 2010 when she was discharged for repeated inappropriate behavior. She had been previously warned about a negative attitude, verbal abuse with the use of profanity and disrespectful treatment of residents. Warnings were issued on September 19 and October 25, 2007. An additional warning was issued on May 6, 2008 and a final warning for the same conduct was issued on July 25, 2008. The claimant was suspended at that time. The employer also issued the claimant three safety warnings in 2007 but the claimant does not remember any safety warnings.

The incident prompting the termination occurred on July 4, 2010. The claimant arrived late to work with a negative attitude. There were several staff and resident complaints about her loud voice and negative attitude. The claimant helped a resident to bed and this resident had recently had a hip fracture so needed tender care. The claimant "manhandled" the resident and after the resident got in bed, she vomited. The claimant was heard to have said, "The bitch did not tell me she had to throw up." A co-employee reported the claimant's conduct to the

employer and the employer conducted an investigation. The employer interviewed three different employees and two residents. The resident in question admitted the claimant treated her with disrespect and the employer confirmed the claimant was guilty of the allegations of mistreatment. The employer reported the incident to the Department of Inspections and Appeals.

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.

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 on July 7, 2010 for repeated inappropriate conduct. She denies all wrongdoing and the employer could only offer hearsay testimony as to the claimant's misconduct on that day. However, the claimant admits she uses profanity, admits she was late to work on July 4, 2010, admits she took care of a resident who had just broken her hip, and admits that the resident vomited after she put her to bed. She

admits most of the evidence provided by the employer but denies she “manhandled” the resident and denies she made the offensive comment.

The administrative law judge concludes the preponderance of the evidence supports the employer’s evidence. The claimant has a history of verbal abuse and inappropriate conduct. When questioned as to whether she made the offensive statement, she made a comment to the effect that she would not be so stupid to have made that comment. She did not object to the comment as something she would have never said to a resident which is what someone who would never talk that way would have said. Additionally, the resident could have vomited as a result of the claimant’s rough treatment. The employer met its burden. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated July 30, 2010, reference 02, is affirmed. 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.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css