

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHARON K BOYENGA
Claimant

APPEAL NO: 11A-UI-11017-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HERITAGE OF IOWA FALLS INC
Employer

**OC: 07/10/11
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's August 19, 2011 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated in the hearing. John Henson represented the employer. Ellen Hinrichs, the administrator, Margaret Hassing, the laundry superintendent, and Nicole Larsen, the director of social services, appeared on the employer's behalf. Diane Klein observed the hearing. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in October 2001. She worked as a full-time housekeeper. Margaret Hassing started supervising her on April 13, 2011. Before Hassing became her supervisor, the claimant had been counseled and received warnings about her job performance. When Hassing became her supervisor, she explained what she expected the claimant to do at work. Hassing even showed the claimant how she needed to clean rooms to do her job satisfactorily. Hassing also told the claimant that when she was told to do something for residents, she was to do that right away because residents were the employer's first priority.

After receiving several complaints about the claimant and addressing each issue with her, the employer gave the claimant a written warning on June 2, 2011. The June 2 warning reviewed the problems Hassing had addressed with the claimant since she became the claimant's supervisor. Some of these problems issues included: leaving her cart in the way of residents, leaving cords from vacuum cleaners in the hallway so someone could trip on the cords, becoming upset when Hassing talked to her about failing to properly vacuum the resident's lunchroom and standing on a resident's bed to clean lights even though Hassing previously told her she could not do this because this was a safety issue. The employer told the claimant on

June 2 that as a result of her failure to improve her performance, the next violation would result in her termination.

On July 15, Larsen saw a resident who was waiting for paper towels to be put in his room. Larsen went to the lunchroom to get a walkie talkie to have claimant get the resident some paper towels. The claimant was in the lunch room. Larsen told the claimant a resident was waiting for some paper towels and asked her to get the resident the paper towels. The claimant responded by saying she would do this in a couple of minutes when her break was over. Larsen then asked the claimant if she could get the paper towels quickly and then come back to finish her break. The claimant told Larsen she would get this done. Larsen then went on break and did not know what the claimant did or did not do.

About 15 to 20 minutes, Larsen saw the claimant with the paper towels going into the resident's room. Unknown to the claimant, the director of maintenance had gotten the paper towels for the resident. The resident saw the director of maintenance before the claimant came and asked him for some paper towels. Larsen reported that the claimant failed to follow her instructions about getting the paper towels immediately for the resident. Since the claimant had been previously talked to about taking care of resident's needs promptly and she had a tendency of doing work on her own time, the employer discharged the claimant for failing to follow Larsen's instructions to take paper towels to a resident right away.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

Even though Larsen asked the claimant to take paper towels to a resident right away and then come back and finish her break, the claimant did not follow this instruction. She waited until she finished her break and then went to take paper towels to the resident's room. It took the claimant 15 to 20 minutes from the time Larsen first asked her to take paper towels to a resident to the time Larsen saw the claimant bring paper towels to a resident's room. Even though the claimant took the paper towels to the resident's room, she failed to follow Larsen's directive to do this immediately. Since Hassing previously told the claimant to make sure residents' needs were her first priority and the employer warned the claimant her job was in jeopardy on June 2 for failing to perform her job satisfactory, the employer discharged the claimant for making a decision to finish her break before she took the resident paper towels even though Larsen asked her to do this right way. For unemployment insurance purposes, the claimant intentionally disregarded the employer's interests when she waited until the end of her break to take paper towels to a resident. The employer discharged the claimant for reasons constituting work-connected misconduct. As of July 10, 2011, the claimant is not qualified to receive benefits.

If the claimant has received any benefits since July 10, 2011, she is not legally entitled to receive these benefits. During the hearing, the claimant indicated she would receive disability

benefits in February 2011, and was only able to work part time instead of full time as she had been working for the employer. If the claimant becomes qualified to receive benefits, the Department should determine if she is able to and available for work if she has a disability or must restrict the number of hours she is able to work.

DECISION:

The representative's August 19, 2011 determination (reference 01) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of July 10, 2011. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs