

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BARBARA S TURNER
Claimant

APPEAL NO. 11A-UI-02764-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LEXINGTON SQUARE LLC
Employer

OC: 10/31/10
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Barbara S. Turner (claimant) appealed a representative's March 4, 2011 decision (reference 03) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Lexington Square, L.L.C. (employer). After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on March 30, 2011. The claimant participated in the hearing. Jean Davis appeared on the employer's behalf. 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:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on January 1, 2004. She worked full-time as an activities aide at the employer's nursing home and rehabilitation center. Her last day of work was January 11, 2011. The employer discharged her on that date. The stated reason for the discharge was her inappropriate behavior during a disciplinary discussion.

The claimant had been advised a number of times over the past year and a half that her attitude and conduct was not appropriate, including most recently a warning on her attitude on December 29, 2010. On January 11 the employer summoned the claimant for a meeting in the office of Ms. Davis, the human resources coordinator, to discuss a concern about comments the claimant had made on January 8 regarding another employee's absence from work. When the claimant came to the office, the claimant first loudly and repeatedly refused to come into Ms. Davis's office to discuss the issue. She then commenced a tirade of about 15 minutes in which she voiced her displeasure about how the situation was being handled. Ms. Davis and the activities coordinator, who was also present, attempted several times to get the claimant to allow them to speak, but she would not. They then decided to allow the claimant to continue and finish, as they determined that rather than give her a warning for the January 8 incident, given her behavior that day in the office, they would not be able to allow her to continue in her employment. When she ceased her tirade, she was told she was discharged.

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); Iowa Code § 96.5-2-a.

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 that was a material breach of the duties and obligations owed by the employee to the employer. 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 that 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. 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's inappropriate behavior toward her supervisors when brought in for a disciplinary discussion, after prior warnings, shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's March 4, 2011 decision (reference 03) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of January 11, 2011. This disqualification continues until the claimant 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.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw