

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

Claimant

**APPEAL NO. 08A-UI-00983-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

Employer

**OC: 12/23/07 R: 03  
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a representative's decision dated January 23, 2008, reference 01, which held that she had been suspended for misconduct in connection with her employment. After due notice was issued, a hearing was held by telephone on February 12, 2008. The claimant participated personally. The employer participated personally with its authorized representative.

The case contains material that is required by law to remain confidential as to the general public. The dependent adult abuse information provided in the hearing will only be made available to the parties to this proceeding and any others who are legally authorized to have access to the information pursuant to Iowa Code section 235B.6

**ISSUE:**

At issue in this matter is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a residential care facility where the claimant worked from July 29, 1980, until December 19, 2007. She worked full time as an LPN. She knew her employment could be terminated if she was found to have committed dependent adult abuse. On or about December 19, 2007, the Iowa Department of Inspections and Appeals (DIA) determined that the claimant had abused a dependent adult resident in her care. Because the case of abuse was determined to be founded, the employer was prohibited from continuing the claimant's employment. The claimant has appealed the determination that she was guilty of abuse and the matter is currently pending.

The allegation of abuse stemmed from an incident that occurred on October 18, 2007. The claimant was paged to a resident's room where an aide was with the resident. The resident was attempting to remove her colostomy bag and there was blood around the incision. The resident had her hands in the blood and the claimant held her hands while the aide obtained something

to clean her hands. After the resident was cleaned up, the claimant asked her not to take the colostomy bag off.

The claimant did not have a history of abusing residents, either verbally or physically. She was discharged solely because the employer was prohibited from continuing the employment. The employer attempted to obtain a waiver that would have allowed the claimant to continue working while her appeal of the abuse finding was pending.

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

An administrative agency making a determination regarding an unemployment compensation claim pursuant to Iowa Code section 96.6 is authorized to have access to dependent adult abuse information in those cases where the abuse is founded. Iowa Code section 235B.6(2)d(4). However, the administrative agency is prohibited from re-disseminating the information to individuals who would not otherwise have independent access to the information under section 235B.6.

Appeal hearings and records of Workforce Development are public records within the meaning of the Iowa Open Records Act (Iowa Code Chapter 22), the Iowa Administrative Procedures Act (Iowa Code Chapter 17A), and the Iowa Employment Security Law (Iowa Code Chapter 96). Pursuant to Iowa Code section 22.2(1), every person has the right to examine and copy a public record and to publish or otherwise disseminate a public record or information contained therein. The provisions of Iowa Code section 17A.12(7) require that contested case proceedings be open to the public. Unemployment appeals hearings are to be conducted pursuant to the provisions of Chapter 17A. Rules of Workforce Development require that administrative law judge decisions be maintained on file for public inspection. See 871 IAC 26.17(3).

The prohibition against re-disseminating dependent adult abuse information requires that the administrative law judge issue a determination that does not identify the parties. To do otherwise would necessarily involve re-dissemination of information required by law to remain confidential. A public decision shall be issued that does not identify the parties. A decision with identifying information will be issued to the parties. That decision and the hearing record, including the audio recording, shall be sealed and not publicly disclosed.

The claimant was discharged from her employment solely because of DIA's finding of dependent adult abuse. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). While an employer may have good cause to discharge an individual, a disqualification will be imposed only if the individual has engaged in misconduct, as that term is defined by law, in connection with the employment. But for the DIA finding, the employer in this matter would have retained the claimant in her employment. Therefore, the administrative law judge must presume that the employer's independent investigation did not provide a basis for discharging the claimant.

The administrative law judge is not aware of any provision of law that makes determinations of DIA binding in an unemployment compensation case. The administrative law judge herein is not privy to the evidence relied on by DIA in making its determination of founded abuse. Therefore, it is unknown as to whether that evidence would sustain a disqualification from job insurance benefits. The employer did not provide any evidence to support an allegation of abuse. The fact that the employer sought a waiver to continue the claimant's employment while the appeal is pending suggests that the employer did not believe abuse or other misconduct had

occurred. The claimant's testimony as to what occurred on October 18, 2007 was uncontroverted on the record.

For the reasons cited herein, the administrative law judge concludes that disqualifying misconduct has not been established. There was no evidence that the claimant intentionally and deliberately acted in a manner she knew to be contrary to the employer's interests or standards. The fact that the employer is prohibited from employing her does not establish disqualifying misconduct. Accordingly, benefits are allowed.

**DECISION:**

The representative's decision dated January 23, 2008, reference 01, is hereby reversed. The claimant was discharged, but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/kjw