

**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**

**JULIE CAYLOR  
2949 E GRAND  
DES MOINES IA 50317**

**MAINSTREAM LIVING INC  
PO BOX 1608  
AMES IA 50010**

**Appeal Number: 04A-UI-06495-DW  
OC: 05/16/04 R: 02  
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, 4<sup>th</sup> 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 are 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Mainstream Living, Inc. (employer) appealed a representative's June 1, 2004 decision (reference 01) that concluded Julie Caylor (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held on July 12, 2004, in Des Moines, Iowa. The claimant participated in the hearing. Kristina Johnson, the human resource coordinator, 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:

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

#### FINDINGS OF FACT:

The claimant started working for the employer on October 2, 2001. She worked full time as a support living technician. The claimant received dependent adult abuse training.

On May 1, 2004, the claimant and a co-worker were responsible for four consumers they took to the circus. When the circus was over, the claimant tried to get three consumers back to the employer's vehicle. They were in the middle of a crowd. One of the consumers became upset with the claimant and started poking her in the face and back. The claimant knew the consumer was upset with her. The claimant became upset because the consumer had not previously physically hit her. The claimant needed time to collect herself before she drove the employer's van. When she gave the van keys to the co-worker, the claimant told her to take this consumer back to the van. The consumer was behind both the claimant and the co-worker at this time. When the claimant distanced herself from the consumer and her co-worker, she noticed the consumer in a group of people who also worked for the employer.

About five minutes later the claimant went to the van and noticed the consumer who had been bothering her was not there. The claimant immediately started looking for the consumer and contacted the appropriate people in an attempt to find the consumer. The claimant did not know the consumer had been picked up by one of the employer's managers and had been looking for the claimant and her co-worker.

When the employer learned a consumer had been left unattended, the employer suspended the claimant and her co-worker. After completing its investigation, the employer discharged the claimant for failing to provide supervision on May 1, 2004. The employer discharged her on May 14, 2004.

#### 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. 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 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).

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).

The employer established business reasons for discharging the claimant. The May 1 incident was the only reason the employer discharged the claimant. Prior to this incident, the claimant's job was not in jeopardy.

When the claimant asked a co-worker to take on the supervision of a consumer who was hitting the claimant and make sure he got back to the van with the co-worker, the claimant was upset. If she failed to adequately communicate to her co-worker that the co-worker was responsible for making sure the consumer got back to the van, at most the claimant used poor judgment. Poor judgment does not rise to the level of work-connected misconduct for unemployment insurance purposes. The facts do not establish that the claimant intentionally failed to provide the necessary and appropriate supervision on May 1. The claimant's failure to make sure all consumers were appropriately supervised does not rise to the level of work-connected misconduct. Therefore, as of May 16, 2004, the claimant is qualified to receive unemployment insurance benefits.

**DECISION:**

The representative's June 1, 2004 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of May 16, 2004, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kjf