

to August 1, 2005. On the morning of July 31, 2005, Director of Nursing Ann Hannum was notified that the claimant had taken a Styrofoam head a resident used for a wig stand and had drawn a face on it, put the wig and a scarf on it, and added sunglasses. Another employee hooked the Styrofoam head on a hangar and added a gown with shoes underneath. The claimant put the ensemble in a wheelchair in the resident's shower room and eventually someone from the first shift put it in the resident's closet. The resident suffers from dementia, does not see well and has several medical problems and when she saw the figure in her closet it scared her and made her cry. When the employer talked to the claimant about the situation August 1, 2005, she admitted participating in making the mannequin look like a person but said she thought it was funny and was a joke between the second and third shifts and she did not think it was hurting anyone. She told the employer other employees were involved but she did not want to reveal their names because she did not want anyone else to get in trouble. The claimant had been warned regarding her performance and for safety issues in the past. The employer decided to terminate the claimant's employment because it believed her actions were abusive.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code Section 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). While the claimant's actions may have been done in fun, rather than with malicious intent, as a CNA she should have known that her decision to make the mannequin look like a person and place it in the resident's closet would scare that resident or any other residents or staff that happened to open the closet or see it in the wheelchair or anywhere else. Employer's Exhibit One clearly demonstrates that even someone with fairly good eyesight could have believed the mannequin, as dressed and hung up in the closet, was a person and been scared, let alone a resident suffering from dementia, poor eyesight and other medical problems. Therefore, the administrative law judge must conclude that the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows a substantial disregard of the employer's interests and the employee's duties and obligations to the employer, as well as the residents. Consequently, the employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

DECISION:

The September 1, 2005, reference 03, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

je/kjf