

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TONYA M ADAMS**

Claimant

**APPEAL NO: 11A-UI-08727-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**S T L CARE COMPANY**

Employer

**OC: 06/05/11**

**Claimant: Respondent (2/R)**

Section 96.5-2-a – Discharge

Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

S T L Care Company (employer) appealed a representative's June 24, 2011 decision (reference 01) that concluded Tonya M. Adams (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 25, 2011. The claimant participated in the hearing. Iris Muchmore, attorney at law, appeared on the employer's behalf and presented testimony from four witnesses, Andrew Wagg, Marcelline Senniger, Natasha Schrage, and Gina Olexa. During the hearing, Employer's Exhibits One, Three, Four, Five, Eleven, and Twelve as well as Claimant's Exhibits A, B, and C were entered into evidence. 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 October 2, 2009. She worked part time (23.5 hours per week) as a direct support professional at the employer's ICFMR (intermediate care facility for the mentally retarded) facility. Her last day of work was June 1, 2011. The employer told her after her shift that day not to return to work until she was brought in for a meeting; she came in for the meeting on June 2, and then was discharged on June 3, 2011. The stated reason for the discharge was making disrespectful statements, not being truthful, and using vulgar language.

The claimant had been given prior warnings, including a final warning given to her on February 17, 2011, for a poor attitude and insubordination. On June 1, as the claimant prepared to finish her shift and leave, she passed a tour being given by Ms. Schrage, the administrative assistant, to two newly hired employees. One of them waved at the claimant as she passed, and the claimant waved back. She then made a statement, either to the newly

hired employees, or to her coworker with whom she was walking, that those persons would not want to work there.<sup>1</sup> Multiple people heard the comment, including the newly hired employees, Ms. Schrage, and Ms. Senniger, who was across the room. Because of the prior discipline and verbal counselings which had been given to the claimant for attitude issues, the employer met with the claimant to discuss the issues on June 2 rather than have the claimant report for work that day.

During the June 2 meeting the claimant denied making the remark to the new employees, but indicated she was only speaking to the coworker. The employer concluded the claimant was not being truthful. The claimant was very belligerent during the meeting. When she was advised that the meeting was concluded, she left the meeting room, but before leaving the facility, while in the lobby area within the hearing of various residents and a visitor, stated that "this is s - - ." As a result of the claimant's conduct on June 1 as well as her conduct on June 2 after the prior warnings, the employer discharged the claimant.

The claimant established a claim for unemployment insurance benefits effective June 5, 2011. The claimant has received unemployment insurance benefits after the separation.

#### **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 which 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 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. 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).

While the administrative law judge does not conclude that the claimant in fact lied about whether she made the statement to her coworker as compared to the new employees, that distinction is not material, as clearly the new employees as well as others heard the comment. After her prior warnings for attitude, her conduct on June 1 as well as her conduct on June 2 shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an

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<sup>1</sup> For purposes of this analysis, it is not material to the administrative law judge whether the claimant made the statement directly to the new employees or to her coworker within the hearing of the new employees.

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.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

**DECISION:**

The representative's June 24, 2011 decision (reference 01) is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of June 3, 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. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

ld/pjs