

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SOJI I OLUTUNDE**  
Claimant

**APPEAL NO: 14R-UI-06665-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SYSTEMS UNLIMITED INC**  
Employer

**OC: 03/02/14**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's March 20, 2014 (reference 01) determination that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated at the April 21 hearing with his attorney, Davis Foster. Jenny O'Brien, Human Resource Specialist, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge issued a decision that employer appealed to the Employment Appeal Board.

The Employment Appeal Board remanded this matter to the administrative law judge for additional evidence. See decision for 14B-UI-03375. Another hearing was held on August 22, 2014. The claimant and his attorney, Davis Foster, participated at the August 22 hearing. Vernon Squires, Attorney at Law, represented the employer. Jenny O'Brien and Josiah Wilbur presented additional testimony at the August 22, 2014 hearing.

The claimant objected to allowing additional testimony from O'Brien and Wilbur and to the admission of Employer Exhibits One through Six. After the parties presented written briefs, Employer's Exhibit One through Six are admitted as evidence. Since the Employment Appeal Board remanded this matter for a complete record, I will consider the additional testimony presented by Wilbur and O'Brien on August 22. While the claimant's argument is compelling, the Employment Appeal Board remanded this matter so a complete record could be made in this case.

Based on the evidence and the arguments of the parties the parties presented on April 21 and August 22 and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

**ISSUE:**

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

## **FINDINGS OF FACT:**

The claimant started working for the employer in July 2003. The claimant worked as a full-time direct care professional caregiver for adults with disabilities. In January 2014 the claimant worked at a facility that served low-functioning adults. Prior to January 21, 2014 the claimant's job was not in jeopardy.

On January 21 two employees reported an incident involving the claimant and a client. A.R. and Wilbur concluded the claimant did not appropriately interact with a client (Employer Exhibits Three and Four). The incident occurred when Wilbur was starting his shift and the claimant was just getting off his shift. Before the claimant came into the kitchen, Wilbur had asked the client to fill a pitcher with water. The client misunderstood Wilbur's instructions and started washing the water pitcher. Wilbur noticed that when the claimant walked into the kitchen, he saw the client with the soapy water pitcher and said "What are you doing?" The claimant went to the client and took the water pitcher from the client and then hit the client's leg. The client appeared startled and the claimant then guided the client to a couch. No one immediately looked at client's leg. One or two hours later, there was no physical indication the client had been hit.

Wilbur did not say anything to the claimant, but he reported the incident to his supervisor. Based on the training Wilbur received he did not believe the claimant had interacted appropriately with the client. The employer reported the incident to the Department of Human Services (Employer Exhibit Two). The employer independently investigated the incident. As a result of the employer's investigation, the employer concluded the claimant had not accidentally or inadvertently hit the client's leg.

When the employer talked to the claimant, he reported that he came up to the client and clapped his hands to get the resident's attention because he thought the client was going to drink the soapy water. The claimant denied hitting the client.

On January 21 the employer indefinitely suspended the claimant to investigate the incident. The employer's disciplinary policy informs employees they can be discharged for physically harming a client who receives services from the employer (Employer Exhibit One).

After a Department of Human Services reported the January 21 incident to law enforcement officials, the claimant was charged with violating Iowa law (Employer Exhibit Five). After receiving information from Iowa Department of Human Services (DHS) that the claimant could no longer work at the employer's facility based on a record check evaluation (Employer Exhibit Six), the employer discharged the claimant on February 18, 2014. The employer understood DHS's information supported the employer's investigation and supported the employer's decision to discharge the claimant for the January 21 incident.

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

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him 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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

After carefully considering all the evidence presented at both hearings, I find Wilbur an unbiased, neutral witness. His August 22 testimony is consistent with his January statement (Exhibit Four). Based on his credibility, I conclude that his testimony is more credible than the claimant's testimony. Wilbur did not work with the claimant, he just knew him because the claimant left work when Wilbur started his shift. Since A.R. did not testify, his written statement (Employer Exhibit Three) has not been given much weight in this decision.

The fact the claimant was charged by law enforcement officials does not establish he is guilty of the charge. That will be decided at another judicial setting. Since Employer Exhibit Five is only a summary of information, I did not rely on information on this exhibit when making this decision.

The fact the claimant's job was not in jeopardy before the January 21 incident and no motive was shown for an inappropriate interaction was established, it is difficult without Wilbur's testimony to find the claimant acted inappropriately. But based on Wilbur's credible testimony and the employer's policy, the evidence establishes the claimant's January 21 interaction, that Wilbur observed, amounts to work-connected misconduct. Therefore, as of March 2, 2014 the claimant is not qualified to receive benefits.

**DECISION:**

The representative's March 20, 2014 (reference 01) determination is affirmed. The employer discharged the claimant for an incident that amounts to work-connected misconduct. As of March 2, 2014 the claimant is disqualified from receiving unemployment insurance benefits. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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