

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CAROLYN AMAN
Claimant

APPEAL NO: 13A-UI-05882-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

FOREST PLAZA LC
Employer

OC: 04/21/13
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 7, 2013, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 25, 2013. The claimant participated in the hearing. Lonny Smith, Manager and Kay Hagan, Service Coordinator, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time direct care/medication manager for Forest Plaza from August 16, 2004 to April 6, 2013. She was discharged for verbally abusing a tenant.

On April 6, 2013, around 7:00 a.m. a tenant in assisted living wanted his catheter changed. The claimant went to his room but was uncomfortable changing catheters and did not know how to change the tubing. She yelled at him, in a stern voice, "We are not nurses and you should be in a nursing home." The claimant was stressed out and stated she "hit a wall." She contacted Service Coordinator Kay Hagan and self-reported the incident. She knew her words were inappropriate and unprofessional and she felt very badly about the situation. Ms. Hagan spoke to the tenant, who was almost in tears, and stated he had run a business and would not talk to customers that way. He also threatened to move out of the facility.

The claimant went to the tenant's room a little later and held his hand, cried and apologized over and over and he forgave her indiscretion. After talking to the tenant and the medication manager that was with the claimant at the time of the incident, the employer terminated the claimant's employment for verbally abusing a tenant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

The employer has the burden of proving disqualifying misconduct. 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 substantial and 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).

While the claimant's words were clearly inappropriate and meet the definition of verbal abuse, the employer acknowledged her actions April 6, 2013, were out of character for her and she had not received any warnings for anything in at least the last year. The claimant self-reported the incident before either the tenant or the medication manager spoke to the employer and the claimant held the tenant's hand, cried and apologized profusely to him about her behavior prior

to her termination. Although not condoning the claimant's actions April 6, 2013, this was an isolated incident of poor judgment on the part of the claimant and as such does not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The May 7, 2013, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs