

**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**

**CATHY A MEYERS  
1908 W PALMER  
SIOUX CITY IA 51103**

**MID-STEP SERVICES INC  
4303 STONE AVE  
SIOUX CITY IA 51106**

**RICHARD STURGEON  
PO BOX 3372  
SIOUX CITY IA 51102-3372**

**Appeal Number: 04A-UI-03594-RT  
OC: 03-24-04 R: 01  
Claimant: Appellant (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 is 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 for Misconduct

STATEMENT OF THE CASE:

The claimant, Cathy A. Meyers, filed a timely appeal from an unemployment insurance decision dated March 24, 2004, reference 02, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on August 11, 2004, with the claimant not participating. Neither the claimant nor her representative, Richard Sturgeon, called in a telephone number, either before the hearing or during the hearing, where any witnesses could be reached for the hearing, as instructed in the notice of appeal. Annalissa Anderson, QMRP, participated in the hearing for the employer, Mid-Step Services, Inc. Jan Hackett, Human Resources Coordinator, and Paula Kassing, Residential Supervisor, were available to testify for the employer but not called because their testimony would have been repetitive and unnecessary. Employer's Exhibit's 1 through 3 were admitted into evidence.

The claimant propounded interrogatories to the employer, which were appropriately answered by the employer, and copies sent to the claimant's representative as well as documents requested by the claimant and her representative.

#### FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, including Employer's Exhibit 1 through 3, the administrative law judge finds: The claimant was employed by the employer as a full-time residential living assistant from August 11, 2003 until she was discharged on March 3, 2004. The employer provides care for mentally handicapped persons, including a residential setting. The claimant was discharged for inappropriate conduct with the mentally handicapped consumers of the employer. On February 29, 2004, the claimant was involved in two incidents that gave rise to her discharge. The first incident arose when the claimant referred to a mentally handicapped resident, Resident A, as "ugly." The second incident was on the same day, February 29, 2004, when the claimant teased a second mentally handicapped resident, Resident B, to the point that the resident became agitated and aggressive. These incidents are documented at Employer's Exhibit 1.

The claimant had previously received a written warning on January 16, 2004, for using vulgar and offensive language and acting in a threatening manner to a residential supervisor and another employee and engaging in horseplay with a mentally handicapped consumer, coercing another mentally handicapped consumer to mimic her actions. The claimant was also suspended on January 29, 2004, for continuing to engage in the behavior for which the written warning was issued. The claimant was informed that further incidents of that nature would result in her termination. The warning and suspension appear at Employer's Exhibit 2. In the claimant's performance appraisal dated January 13, 2004, as shown at Employer's Exhibit 3, the claimant was rated low for interpersonal relationships, self-control, role modeling and appearance, and safety performance.

#### REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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's witness, Annalissa Anderson, QMRP, credibly testified, and the administrative law judge concludes, that the claimant was discharged on March 3, 2004. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes, that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. Ms. Anderson credibly testified that the claimant was discharged for two separate incidents on February 29, 2004, involving different mentally handicapped consumers of the employer. The claimant referred to one resident as "ugly" and teased another resident to the point of agitation and aggression. This conduct followed a written warning and a suspension, as shown at Employer's Exhibit 2, and a poor performance appraisal for these areas, as shown at Employer's Exhibit 3. The administrative law judge notes that the employer provides care for mentally handicapped persons, including a residential setting. In view of the employer's services provided to mentally handicapped persons and the claimant's warning and suspension and performance appraisal, the administrative law judge concludes that the claimant's behaviors were deliberate acts constituting a material breach of her duties and obligations arising out of her workers' contract of employment and evince a willful or wanton disregard of an employer's interest and are, at the very least, carelessness or negligence in such a degree of recurrence, all as to establish disqualifying misconduct.

Accordingly, and for all the reasons set out above, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless she requalifies for such benefits.

#### DECISION:

The representative's decision of March 24, 2004, reference 02, is affirmed. The claimant, Cathy A. Meyers, is not entitled to receive unemployment insurance benefits, until or unless she requalifies for such benefits, because she was discharged for disqualifying misconduct.

dj/kjf