

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RUBY J NELSON**

Claimant

**APPEAL NO. 13A-UI-07480-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MAINSTREAM LIVING INC**

Employer

**OC: 05/26/13**

**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a representative's decision dated June 18, 2013, reference 01, which held that the claimant was not eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was held on July 29, 2013. The claimant participated personally. The employer participated by Marcanne Lynch, the human resources manager; Mariana Valdez, a supported living technician; Tasha Millard, a supported living technician; and Tracy Moore, the team leader. The record consists of the testimony of Marcanne Lynch; the testimony of Mariana Valdez; the testimony of Tasha Millard; the testimony of Tracy Moore; the testimony of Ruby Nelson; and Employer's Exhibits 1-9.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer provides residential support to adults with disabilities. The claimant was hired on March 9, 2009. Her last day of work was May 24, 2013. She was a full-time supported living technician. She was terminated on June 4, 2013.

The incident that led to the claimant's termination occurred on May 24, 2013. The claimant worked at a home. One of the consumers that resided in the home has Alzheimer's disease. The consumer is prone to crying. On May 24, 2013, the consumer began crying and the claimant told the consumer that it was "tent time." She pushed the consumer into a reclining chair and covered her whole body with a blanket. The blanket was tucked in so that the consumer could not get up. The consumer tried to get up but the claimant told her to sit back down and to stop crying.

The incident was witnessed by two other employees: Mariana Valdez and Tasha Millard. The incident was reported to Tracy Moore, the claimant's supervisor. Ms. Moore called the claimant

and told her not to report to work on Monday because there were concerns about her work. A meeting was set up for May 28, 2013, but the claimant did not come to the meeting. It was rescheduled for May 30, 2013. The employer made the decision to terminate the claimant.

The claimant had been removed from another worksite on April 9, 2013, after a consumer complained about her. The employer was concerned about her behavior in restricting a consumer's bedtime and behavior in the community. (Exhibit 7) The consumer was intimidated by the claimant and did not want her to return. (Exhibit 7)

The employer has a written policy that prohibits non-accidental injury, which includes unreasonable confinement and assault. (Exhibit 6)

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

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The employer has the burden of proof to show misconduct.

The claimant is not eligible for unemployment insurance benefits. The greater weight of the credible evidence in this case shows that the claimant improperly restrained a consumer in a recliner chair in an apparent attempt to stop her from crying. When the consumer tried to get

up, she was pushed back down and told to stop crying. Two other employees worked in the home and witnessed the claimant's behavior. Both employees testified there was no such thing as "tent time." The claimant did like the blanket tucked around her when she was in her bed sleeping, but not while she was awake and forced to sit in a recliner. The claimant's testimony that she did not know that her actions were unnecessary restraint is rejected. The employer clearly has a policy against unreasonable confinement. No one could reasonably believe that pushing a consumer into a chair and tucking a blanket so that she could not move was reasonable. The claimant had been previously warned about unnecessary restrictions on a consumer's rights and had been removed from a home for that reason. The employer has shown a pattern of behavior that constitutes misconduct. The claimant breached her duty to the employer to care for consumers in a respectful and kind manner in accordance with written policies. Benefits are denied.

**DECISION:**

The decision of the representative dated June 18, 2013, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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