

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LORIE FREDERICKSEN

Claimant

APPEAL NO. 07A-UI-06820-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABILITIES UNLIMITED INC

Employer

**OC: 06-17-07 R: 02
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 5, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 25, 2007. The claimant participated in the hearing. Bill Blanchard, Program Coordinator; Alicia Prosser, Adult Day Program Supervisor; and Pam McAllister, Administrative Assistant, 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 part-time site manager for Abilities Unlimited from August 6, 2002 to May 31, 2007. On May 29, 2007, the claimant was having a conversation with Supervisor Alicia Prosser in the adult day program unit when resident Julie began interrupting them. The claimant turned and put her hand over Julie's mouth and said, "I'm talking Julie." Julie, who is blind, said, "I'm sorry," and went outside and asked who was out there and then asked if any of them had put their hand over her mouth. Administrative Assistant Pam McAllistar said none of them had done so and she did not know who did. She asked Julie if she was interrupting and Julie said yes. The claimant came outside and the staff asked her if she had placed her hand over Julie's mouth and the claimant denied it and said she was tired of Julie lying about the staff. Julie became "hysterical" and said she would not do it again. Ms. McAllistar said she was not lying but just did not know who did it and the claimant said, "No one touched her in there." Ms. Prosser came outside and Ms. McAllistar said Julie was upset because she accused someone of putting their hand over her mouth and no one did so and Ms. Prosser said the claimant just did so inside and, consequently, Ms. McAllistar reported the situation to Program Coordinator Bill Blanchard. Mr. Blanchard met with the claimant with a witness present and asked the claimant if she placed her hand over Julie's mouth and the claimant said she did not put her hand over her mouth but put her hand over her lip and chin area and said, "I'm talking." Mr. Blanchard told the claimant she could not touch a resident in that manner and terminated

her employment. The claimant had been warned March 19, 2004, after she stood above Julie and made beeping sounds. Because Julie was blind, she could not tell where they were coming from but asked the person to stop making the sounds but the claimant continued to do so even though she was asked not to.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

Not only did the claimant place her hand over Julie's mouth she lied about doing so when other staff members told her what Julie said and asked if she had done so. The claimant denied touching Julie and then stated loudly that she was tired of Julie "lying about staff" which made Julie hysterical. The claimant's behavior in taking out her frustration or anger on a disabled women whom she was charged with caring for was a willful disregard of the standards the employer as well as the resident had to expect of her. Additionally, this was not the first time she had tormented Julie by her actions. Consequently, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer.

The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

DECISION:

The July 5, 2007, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css