

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LINDA A HUMPAL**  
Claimant

**APPEAL NO. 11A-UI-10424-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KRYSILIS INC**  
Employer

**OC:07/10/11**  
**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 July 27, 2011, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on August 30, 2011. The claimant participated. The employer participated by Nicole Eusracio, residential coordinator, and Donna Kluss, human resources coordinator. The employer was represented by Jamie Cooper, attorney at law. The record consists of the testimony of Nicole Eusracio; the testimony of Donna Kluss; the testimony of Linda Humpal; and Employer's Exhibits 1 through 8.

**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 home- and community-based services to individuals with physical and mental disabilities. The claimant was hired on January 26, 2009, as a full-time direct support staff member. Her last day of work was July 2, 2011. On July 2, 2011, she was placed on suspension pending investigation of an incident on July 2, 2011. The claimant was terminated on July 8, 2011, following that investigation.

The incident that led to the claimant's termination occurred on July 2, 2011. The claimant was traveling in a company vehicle with two individuals for whom the employer provided services. Neither individual could access the community without support. This means that, given the individual's disability, staff support was required at all times if the individual were to go out into the community. One of the employer's primary concerns was the safety of the individuals. Each direct support staff member was responsible for knowing an individual's required level of support.

One of the individuals for whom the claimant was responsible wanted to go to a fireworks display that was being held at a nearby lake. The individual was to meet her guardian there. The claimant did not know where the campground was located. She stopped at one campground and asked the

individual to go over a bridge and look for the campground. This meant that the individual would leave the claimant's line of sight. The individual went over the bridge and the claimant "lost" her.

The claimant called the on-call staff and efforts were immediately made to locate the missing individual. She was eventually located by her guardian. The employer did an investigation and found that the individual had walked approximately one mile and had been without supervision for a period of time between 30 minutes and one hour. The parties do not agree on whether the claimant also lost sight of the other individual who was still in the van.

When the claimant left the campground area, she was also involved in an automobile accident. She hit a truck and damaged both vehicles. The claimant could not locate the accident kit that was in the van. The employer received reports that the claimant intended to drive off without reporting the accident, something the claimant denied.

The claimant was terminated on July 8, 2011, for her failure to provide proper supervision for two individuals for whom she was providing care. The claimant's accident also played a role in the termination.

#### **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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Misconduct that leads to disqualification 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. When there is carelessness or negligence of such a degree that intentional and substantial disregard of the employer's interest is shown, misconduct is established. The employer has the burden of proof to establish misconduct.

The very difficult issue in this case is whether the claimant's actions on July 2, 2011, are something more than mere negligence, that is, wanton carelessness. The evidence in this record shows that the claimant knew that both individuals she was supervising on July 2, 2011, were not permitted to have what the employer called community access without supervision. Both individuals were vulnerable adults and required supervision while out in public for their own safety. The claimant testified that she was responsible for reading the plans for each individual, which would have specified how much supervision was required.

The claimant instructed one individual to go across a bridge to find a campground. The claimant had not gotten instructions on the campground's location prior to leaving with the two individuals. The individual who was instructed to cross the bridge should not have left without supervision. Another individual was in the vehicle. The claimant lost sight of the individual who was crossing the bridge. The employer concluded that she walked approximately one mile and was without supervision for 30 minutes to an hour. The evidence is divided on whether the claimant improperly supervised the individual who remained in the car. A reasonable inference is that she did not provide optimal supervision. Finally, the claimant was involved in an accident with the company vehicle.

The administrative law judge concludes that claimant's actions that evening were more than mere negligence and, in fact, amount to wanton carelessness. Losing contact with an individual that must be supervised at all times along with less than optimal supervision of a second individual and an accident with the company vehicle show a pattern of behavior that is misconduct. Benefits are denied.

**DECISION:**

The representative's decision dated July 27, 2011, 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

vls/kjw