

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**MONIKA M GORDY**  
Claimant

**APPEAL NO: 19A-UI-01293-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GOOD SAMARITAN SOCIETY INC**  
Employer

**OC: 01/20/19**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the February 7, 2019, 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 March 1, 2019. The claimant did not respond to the hearing notice and did not participate in the hearing. Sarah Hopkins, Human Resources Director; Vani Tschantz, Administrator; and Tom Kuiper, Employer Representative; participated in the hearing on behalf of the employer. Andrew Volman, Administrator in Training, observed the hearing. Employer's Exhibit One was admitted into evidence.

**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 CNA for Good Samaritan Society from July 21, 2017 to January 24, 2019. The claimant worked the overnight shifts from 6:00 p.m. to 6:00 a.m. The claimant was working with a resident January 20, 2019, and became frustrated when the resident insisted on taking her eye patch off and on. The claimant finally raised her voice and told the resident she understood she wanted her eye patch back but she was not going to get it. She realized she should have involved the nurse on duty rather than refuse the resident her eye patch but the nurse declined to give the resident her eye patch back either. When raising her voice to the resident, the claimant woke the resident's roommate and then apologized for her actions. On January 24, 2019, the employer terminated the claimant's employment for this incident. The claimant had not received any previous warnings.

**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, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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 behavior was inappropriate and unprofessional, this was an isolated incident of misconduct. Consequently, it does not rise to the level of disqualifying job misconduct as that term is defined by Iowa law.

**DECISION:**

The February 7, 2019, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/scn