

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BETTY HARLESS

Claimant

APPEAL NO: 10A-UI-11211-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**LUTHER CARE SERVICES/HOMES FOR
THE AGING
TRINITY CENTER**

Employer

OC: 07/11/10

Claimant: Appellant (1)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Betty Harless (claimant) appealed an unemployment insurance decision dated August 5, 2010, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Luther Care Services/Homes for The Aging - Trinity Services (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 29, 2010. The claimant participated in the hearing with Attorney Claire Cumbie-Drake and former employee Bonnie Dunn. The employer participated through Shelly Corbin, Director of Housekeeping, Laundry & Floor Care. Employer Exhibit One was admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed full-time from October 17, 1978 through July 8, 2010 when she was discharged for a repeated failure to follow the employer's directives. She worked the first nine years as a housekeeping assistant and then worked in the laundry the next 21 years. The claimant was transferred back to housekeeping on April 16, 2010 because of her disruptive behavior in the laundry.

The claimant was suspended for five days on January 6, 2009 for repeating hurtful gossip about another employee. She received a documented verbal warning for "defective work" on November 3, 2009. The claimant failed to properly sort the laundry on October 27, 2009 so items were given to the wrong residents. The director of housekeeping went to the laundry and the claimant had failed to prioritize what needed to be done first. She emptied a dryer full of "personals" and there were already numerous personals that had not been delivered the previous day. The claimant was going to start yet another load of personals when there were

no “whites” ready to go back to the rooms. The employer directed the claimant to prioritize, to complete one task before starting another, and to deliver the linens to the floors very early.

The director had to go to the laundry numerous times to determine why something was not being done in a timely manner when the claimant was working the back room. The employer went to the laundry on January 13, January 19, February 22, and February 24, 2010 and specifically told the claimant to get her chores done. The claimant received a verbal warning on March 16, 2010 for scratching lottery tickets in the laundry room instead of working. There was a napkin issue in the laundry on March 25, 2010 and the employer told the claimant she was going to be removed from laundry if she could not complete her duties.

The claimant was suspended for three days on March 27, 2010. She again failed to complete the duties that had first priority. The clothing protectors and napkins were ready to be taken out to the floors at 9:00 a.m. but the claimant just let them sit there. A co-worker reminded her twice that they needed to go out but the claimant did not do it until the director called her and told her the kitchen needed the items immediately. The employer warned her that failure to follow supervisor's orders again would result in a five-day suspension or termination. The employer provided an itemized list of duties to be completed in the laundry room and the claimant signed for receipt of that list.

There continued to be problems in the laundry. On April 14, 2010 the director went to the laundry and found two racks of personals that should have been delivered the day before. There was a wire basket of wash cloths that should have been put away and the stack of clothing protectors the claimant had been directed to wash were not in there. There were now five stacks of clothing protectors ready to go out for breakfast. The employer had seen four at 1:15 p.m. and the claimant did not have time to have washed and dried the additional clothing protectors. The claimant had continued to be disruptive and defiant as far as doing what she wanted instead of doing what she had been directed to do. Due to the claimant's longevity, the employer opted to transfer her to housekeeping instead of discharging her.

The employer gave the claimant two weeks of re-training. There were complaints on May 6, 2010 that the claimant was telling the social worker and the people in the break room that she had been taken out of laundry because of one person. The director met with the claimant and reminded her that she was taken out of laundry for not following the employer's directives and for her disruptive behavior. The claimant was advised to simply report to work and do her job and discontinue blaming others. The employer noticed the claimant's floors were not clean after she reported they were done. The claimant is required to change her mop water every three rooms but she was not doing that. When she was asked why, she said that she did not know why she was not changing her water as required.

The claimant was on funeral leave from May 27, 2010 to June 5, 2010. The employer directed the claimant to help a co-employee with C-hall, first floor on June 7, 2010 and gave her a list of chores that were to be done in the order provided. The co-worker was worried about getting the work done and spoke with the employer about it. The employer went to see what the claimant was doing and the claimant was washing windows, which was the last item to be completed. When questioned, the claimant said she wanted to do it this way. She was advised to complete her duties as directed or to go home. On June 8, 2010 the employer was making visual rounds in the second floor, A-hall. A room appeared to be clean but there was an area of dried feces on the shower wall. The employer asked the claimant if she had cleaned the room and she said she had so the employer pointed out the feces and the claimant simply said that she would clean it.

There were some sign off sheets given to the claimant on June 14, 2010 as one room had to be done twice daily and the claimant was the one responsible for the entire hall. She said she understood and had no questions. The employer did a walk-through on June 15, 2010 and most of the floors looked as they had not been dust mopped or mopped as there was obvious debris on the floors. The employer told the claimant at 6:30 a.m. on June 15, 2010 that she was not happy with the work she had performed on the previous day. At 8:30 a.m. the employer asked the claimant what rooms she had cleaned as the employer wanted to do an inspection and the claimant was just on her first room. When asked why she did not have her work done, the claimant reported that she was doing extras and the employer told her that should not have prevented her from completing the work. The employer inspected the claimant's rooms at 12:30 p.m. and the floors in several of the rooms had not been mopped and several sinks had not been cleaned. Room 227, which was supposed to be cleaned twice daily, had not been cleaned. The employer asked the claimant at the end of day how she thought she was doing and the claimant said she thought she was doing well but the employer told her otherwise. The employer told her she was not cleaning the bathrooms or the floors properly and since she was still in her probationary period, she could be terminated for failure to meet the facility's standards on cleanliness. The claimant acknowledged understanding.

The employer spent more time with the claimant on June 18, 2010 showing her what was required. The claimant went to the employer on July 1, 2010 and asked what floor she needed to work on and the employer told her the second floor since there were too many complaints about her work on the first floor. The employer did a visual walk-through of the claimant's rooms on second floor on July 6, 2010 and several floors either had food or dirt on them. Several hours later, the employer did another inspection and still found work not yet done. She called the claimant and asked the claimant if she could see what the employer was talking about and the claimant said she could but claimed that she had cleaned those floors. The employer felt there was no other option than to discharge the claimant since she refused to clean as directed.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

Iowa Code § 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.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged on July 8, 2010 for poor work performance and a repeated failure to follow the employer's directives. Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). When an individual is discharged due to a failure in job performance, proof of that individual's ability to do the job is required to justify disqualification, rather than accepting the employer's subjective view. To do so is to impermissibly shift the burden of proof to the claimant. Kelly v. Iowa Department of Job Service, 386 N.W.2d 552 (Iowa App. 1986). The claimant worked for this employer over 30 years and she was well aware of what was required and was very capable of performing her duties. For whatever reason though, she simply chose not to complete those duties. The claimant's conduct shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated August 5, 2010, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs