

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ASHLEY PICKERING
Claimant

APPEAL NO. 08A-UI-09570-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CLEARVIEW HOMES
Employer

**OC: 08/31/08 R: 12
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Ashley Pickering (claimant) appealed an unemployment insurance decision dated October 9, 2008, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Clearview Homes (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 4, 2008. The claimant participated in the hearing. The employer participated through Joe Routh, Administrator; Matt Routh, Assistant Administrator; Robin Bickel, Director of Nursing; Alicia Still, Staff Nurse; and Kelly Groves, Staff Nurse. 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 as a certified nurse's aide working various hours from October 1, 2007 through September 7, 2008 when she was discharged for insubordination and a repeated failure to follow directives. During the last several weeks of her employment, the claimant was repeatedly rude and offensive to supervisors and co-workers. She was given a verbal warning during her last month of employment about rude behavior. On August 29, 2008 the claimant was reading the newspaper and when RN Alicia Still asked her to assist a resident, the claimant said she would but continued to read the paper. Ten minutes later she was still reading the newspaper when RN Still asked her why she was not assisting the resident. The claimant angrily responded that she needed to read something. RN Still told her that assisting a resident came before reading the newspaper and the claimant responded, "You don't need to be so rude about it." The claimant then went to help the resident and yelled, "Jesus!"

Director of Nursing Robin Bickel spoke to the claimant and informed her she could not be rude and had to follow RN Still's directives. The claimant became rude and offensive to DON Bickel

and was advised she needed to keep her emotions more in control. DON Bickel also told the claimant she needed to respect her supervisors and not be rude or offensive around visitors or residents. The claimant indicated an understanding. On September 2, 2008 DON Bickel received a complaint about the claimant being rude to her supervisor and fellow employees on the previous day. The claimant called in her absences on September 2, 3 and 5, 2008.

When LPN Kelly Groves arrived at work on September 6, 2008, she saw the claimant sitting at the desk with several call lights on. The claimant's co-worker was waiting for her help. She got up and helped but went back to the desk a few minutes later to read a fundraiser magazine. The call lights were on again and the claimant ignored them. LPN Groves told the claimant she needed to get up, answer the lights and help her co-workers. The claimant replied that she was tired of the nurses always yelling at her to do something. LPN Groves told the claimant she was not yelling but had just told the claimant to answer a light. The claimant told LPN Groves, "Just cause you are working on days now you don't have to act like the rest of the bitches on days." LPN Groves told the claimant not to talk to her like that and the claimant said she would if she wanted to. LPN Groves reported the incident to DON Bickel and Assistant Administrator Matt Routh was informed.

AA Routh brought the claimant into his office to talk to her about her poor job performance and he reminded the claimant that answering the call lights was her first and foremost duty. The claimant became instantly angry and defensive and started complaining about the other employees. When questioned about disobeying supervisor's directives, she provided multiple excuses justifying her behavior. AA Routh told the claimant there had been complaints from residents and the residents' families about her rudeness and poor quality of care. The claimant was told if she wanted to continue employment she had to apologize to the residents and their families. She refused and said she would not apologize for something she did not do. The claimant was advised she could not continue employment if she did not apologize and did not respect her co-workers. She then argued that she did not have to respect her co-workers. AA Routh gave the claimant an ultimatum and let her know she needed to decide if she wanted to work there, and if so, she needed to be respectful.

The claimant agreed and went back to work. Before the night was through, she had confronted a spouse of a resident. The claimant told the spouse that a member of her family complained about the claimant being mean to the resident and she declared she was not mean to the resident. The spouse did not know what to say to the claimant and was upset by the confrontation. The spouse informed LPN Groves who told her not to worry about it and to talk to AA Routh when she next saw him. The claimant disappeared after that and LPN Groves found her in another hall talking to employees when there were several call lights on in the north hall where she was assigned. The claimant was asked if she was on break and when she replied that she was not on break, she was directed to get back to her hall. The claimant was visibly angry with LPN Groves the rest of the night and at one point told her, "Don't worry, I'm working. You don't have to follow me."

On September 7, 2008 AA Routh asked LPN Groves how the rest of the claimant's shift went the night before and was told what happened. It was unacceptable that the claimant confronted a resident's family member in that manner and considering that she had been given a final warning, it was determined she would be discharged. After the claimant reported to work, DON Bickel advised her that she needed to leave as she had been replaced on the schedule and to contact AA Routh with any questions regarding her employment status.

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 for insubordination and a repeated failure to follow directives. She argues that she was fired because she was discriminated against because she was not from Iowa. The preponderance of the evidence confirms the claimant was repeatedly insubordinate to her superiors and refused to perform her required job duties even after being warned. Repeated failure to follow an employer's instructions in the performance of duties is misconduct on a regular basis. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). The claimant's conduct during the hearing provided some insight as to the repeated problems during her employment. In the hearing, she inappropriately questioned Alicia Still whether she had been drinking or whether she was sober because she was not telling the truth. She later admitted, "I do probably have an attitude.....I was offensive back." An employer has the right to expect decency and civility from its employees and an employee's use of profanity or offensive language in a confrontational,

disrespectful, or name-calling context may be recognized as misconduct disqualifying the employee from receipt of unemployment insurance benefits. Henecke v. Iowa Department of Job Service, 533 N.W.2d 573 (Iowa App. 1995). The employer has met its burden. 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 October 9, 2008, 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/css