

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRENDA K WILLIAMS
Claimant

APPEAL NO. 13A-UI-11544-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOOD SAMARITAN SOCIETY INC
Employer

OC: 09/15/13
Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Brenda Williams, filed an appeal from a decision dated October 3, 2013, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on November 6, 2013. The claimant participated on her own behalf and was represented by Ronald Pepples. The employer, Good Samaritan Society, participated by Administrator Brandi Petrick and Human Resources Director Janice Foote. Exhibit A was admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Brenda Williams was employed by Good Samaritan Society from September 13, 2010 until September 16, 2013 as a full-time dietary director. She had received a written warning on March 21, 2013, "disruption of routine." Complaints had been received regarding bullying when she would be rude and critical toward other staff, raising her voice and using profanity. On August 5, 2013, she was requested to sign an agreement that she would "meet standards and expectations of the employer. This was prompted by further complaints about her behavior.

On September 10, 2013, the claimant had given hot chocolate to a resident in the dining room. A certified nursing assistant (CNA) had brought him to the dining room and requested it. The resident spilled the chocolate on himself causing burns. He is a resident who is not to be served unless a staff member is at the table to assist him.

The claimant was suspended pending further investigation. Written statements were provided from several witnesses who all confirmed the claimant served the resident while the CNAs were not at the table but still bringing in other residents for the meal.

The claimant was discharged by Human Resources Director Janice Foote on September 16, 2013.

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.

The employer has the obligation to provide a safe environment for all dependent adult resident in its care. The claimant's conduct interfered with its ability to do so. She did not follow proper procedure by giving a very hot drink to a resident when there was no one at the table to assist him.

Ms. Williams maintained there was a CNA present but from the statements of other witnesses, none of these were at the table, they were still bringing residents into the dining room. They were not in a position to assist the resident at the table as required.

The record establishes the claimant acted contrary to the employer's best interests in putting the resident in jeopardy. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and is misconduct. The claimant is disqualified.

DECISION:

The representative's decision of October 3, 2013, reference 01, is affirmed. Brenda Williams is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css