

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARGARET A HALL
Claimant

APPEAL NO: 06A-UI-10420-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GENESIS DEVELOPMENT
Employer

**OC: 10-24-06 R: 02
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Margaret A. Hall (claimant) appealed a representative's October 24, 2006 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Genesis Development (employer) would not be charged because the employer discharged the claimant for work-connected misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 8, 2006. The claimant participated in the hearing. Catherine Miller, the community living director, appeared on the employer's behalf. 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:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on July 22, 2005. The claimant worked as a full-time community support specialist. The claimant worked the night shift. The claimant's job duties required her to assist clients getting ready in the morning so they could attend their day programs. The claimant's assistance could involve helping a client get dressed and making sure the client packed a lunch.

The employer uses progressive discipline when an employee does not do her job appropriately. The claimant received a verbal warning on November 30, 2005. The claimant received the warning because the employer learned she had been disrespectful to a client and had cut a client's hair without authorization.

The employer gave the claimant a written warning on February 6, 2006. The employer gave the claimant a written warning for several issues. The issues the employer addressed in the written warning included a client's complaint that the claimant was too dictatorial, the claimant missed a number of mandatory meetings, the claimant had been late for work and a couple of times did

not properly record that she had been late for work, the claimant did not make hourly calls to another home, and the claimant ate clients' food one night.

On July 10, 2006, the employer gave the claimant another written warning and a one day suspension with pay for talking to another employee about her frustrations with a new client. The employer told the claimant a new client was being assigned to the home where she worked. Based on the employer's information, the claimant concluded the new client was self-sufficient and he was not. The claimant was frustrated with the employer for failing to properly advise her about the new client's level of care and asked a co-worker what she was supposed to do with the new client. The employer gave the claimant this warning because the claimant had not gone to her supervisor about her frustrations.

On August 7, this same client would not cooperate when he woke up. He refused to get dressed and would not make his lunch. When the client would not go up the stairs in the home, the claimant tried to get his attention by placing her fingers on his shoulder and then gave him a small push with three fingers. Another client became upset because his roommate would not get dressed and made him late to his day program. Prior to August 7, the claimant's supervisor did not respond to the claimant's calls at that time of the morning. So the one client would not get anymore agitated, the claimant drove both clients to the day program. The claimant knew she could not leave the problem client by himself. The claimant did not call her supervisor before she left the home. After dropping off one client, the claimant planned to take the client who was still in his pajamas back to the home so he could get dressed, make a lunch, contact her supervisor and then take the client to the day program. When day staff saw the two clients, they told the claimant to leave both clients and they would take care of them. The day staff took care of this situation by calling the claimant's supervisor.

After Miller learned the claimant transported the client to the day program while he was still in his pajamas and had not packed a lunch for him, she concluded the claimant again violated the employer's policy by failing to perform her job appropriately. The employer discharged the claimant because she again failed to do her job duty satisfactorily and disregarded a client by transferring him to his day program in his pajamas without a lunch. After the employer made the decision to discharge the claimant, the employer also received information that the claimant had pushed the client. The client reported this to the day staff.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. 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 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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency,

unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

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. 871 IAC 24.32(8).

The employer established compelling business reasons for discharging the claimant. The claimant could not leave the difficult client by himself at the home when she took the other client to the day program. Although the claimant had no intention of leaving the difficult client at the day program, the day staff insisted that the claimant leave the client and they would take care of him. The claimant's actions on August 7 do not establish that she intentionally or substantially violated the employer's interests. The claimant may have used poor judgment when she did not try to contact her supervisor before she went to the day program with the clients. Under the circumstances the claimant acted reasonably and did not commit work-connected misconduct. As of October 1, 2006, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's October 24, 2006 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of October 1, 2006, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs