

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

TAMARA J KAYOKELA
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CEDAR RAPIDS IA 52406-2765

LUTHERAN HOME FOR THE AGED
ASSOCIATION – EAST
PO BOX 559
VINTON IA 52349-0559

Appeal Number: 06A-UI-07329-DWT
OC: 06//18/06 R: 03
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Lutheran Home for the Aged Association – East (employer) appealed a representative's July 10, 2006 decision (reference 01) that concluded Tamara J. Kayokela (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 24, 2006. The claimant participated in the hearing. Kim Emrich, the administrator, Michelle Rogers, the director of nursing, and Pam Parmater, the assistant director of nursing, 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 August 8, 2005. The claimant worked as a full time certified nurse aide. The claimant's husband also worked for the employer. Rogers supervised the claimant.

In mid-May 2006, the claimant's husband disrupted the workplace while the claimant was working. The claimant's husband was not working, but he came to the workplace and assaulted the claimant. As a result of the assault, a restraining order was placed on the claimant's husband. The claimant did not request the restraining order. The claimant and her husband continued contact with one another and were trying to work out their problems.

Sometime prior to May 30, the claimant talked to Rogers about the problems another employee, J.S., created between the claimant and her husband. J.S. lived in the same apartment building as the claimant and her husband. The claimant asserted J.S. flirted with the claimant's husband and attempted a relationship with him. The employer reminded the claimant she had to keep her personal problems out of the workplace.

On May 29, the claimant left her daughter with her husband while she worked. Even though there was a restraining order, the claimant had no plans to enforce the restraining order against him. The claimant was already at work and outside smoking when J.S. went outside to smoke before her shift began. J.S. made a comment that was not work-related. The claimant responded by telling J.S. she did not want to talk to J.S. unless there was something J.S. needed to tell the claimant about a resident. J.S. then left, punched in and the claimant and J.S. worked together without any further incidents during the shift. The claimant gave J.S. the opportunity to choose where she wanted to work and let J.S. do this work. J.S. and the claimant did not have any problems working together this shift.

During the claimant's shift, police came to the employer's workplace and told the claimant she had to get her daughter and have her stay with another relative or friend. The claimant's daughter was with the claimant's husband. The charge nurse on duty told the claimant to leave work to take care of her daughter. If the charge nurse had not made this comment, the claimant would have contacted her sister to pick up and take care of her daughter. The claimant took her daughter to her sister's home.

At the end of the shift, the employer learned a housekeeper told J.S. the claimant and two other co-workers were waiting for J.S. at the time clock. J.S. also received information that the claimant and two co-workers were waiting for J.S. outside. When the claimant reported this to the employer, she was crying and emotional. J.S. appeared frightened and upset. J.S. explained that she believed the claimant was going to harm her. J.S. told the employer that before her shift, the claimant had threatened her.

At the end of her shift, the claimant waited for two co-workers because she took these employees home. The claimant and two co-workers were in the claimant's car in the parking lot for a while because the claimant had to let her car run a few minutes before she could drive it.

Based on J.S.'s demeanor and report of what the claimant said to her before her shift, the employer concluded the claimant threatened to harm a co-worker at work. On May 30, the employer discharged the claimant. The employer did not talk to the claimant or the two co-workers who were with the claimant at the end of the claimant's May 29 or 30, 2006 shift.

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 section 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).

The claimant's testimony as to what she said and did on May 29 is credible and must be given more weight than the employer's reliance on unsupported hearsay information or J.S.'s version of events as reported to the employer in late May. Since the claimant's testimony is credible her version of what happened on May 29 is reflected in the Findings of Fact.

Based on a preponderance of the credible evidence, the claimant did not threaten a co-worker at work or leave work without authorization on May 29 or 30. The claimant did not commit work-connected misconduct. Therefore, as of June 18, 2006, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's July 10, 2006 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of June 18, 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.

dlw/pjs