

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**STEPHANIE J. BERGQUIST**  
Claimant

**APPEAL NO. 09A-UI-09254-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RESCARE INC**  
Employer

**Original Claim: 05/24/09  
Claimant: Appellant (2)**

Section 96.5-2-a – Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a representative's decision dated June 23, 2009, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on July 15, 2009. The claimant participated and was represented by Gregory Humphrey, attorney at law. The employer participated by Barb Whitten, administrator; Kim Fullenkamp, service coordinator; Sarah Pezley, service coordinator; and Connie Dusek, human resources administrative assistant. The record consists of the testimony of the following individuals: Barb Whitten, Kim Fullenkamp, Sarah Pezley, Connie Dusek, Stephanie Bergquist, and Deb Burghoffer. The record also consists of claimant's exhibit A.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer in this case provides services to individuals who have mental disabilities in order to permit these individuals to live in the community. The claimant had been employed full time since May 26, 2006, as a community support service provider. She worked from 12:00 p.m. to 8:00 a.m. at a site operated by the employer.

The incident that led to the claimant's discharge occurred on May 28, 2009. The claimant was scheduled to be relieved at 8:00 a.m. Neither the claimant nor the employer knew that the employee that was supposed to relieve the claimant had changed the schedule so that she could attend a meeting at 8:00 a.m. At 8:05 a.m. the claimant called her supervisor, Kim Fullenkamp, and informed Ms. Fullenkamp that her relief had not arrived. Ms. Fullenkamp told the claimant to stay at the site until she could find someone to relieve the claimant. The claimant got upset and called Ms. Fullenkamp a "crummy supervisor." Ms. Fullenkamp then tried to call the claimant back and the claimant was upset. She did not answer the phone

properly and only said "hello." After some conversation, the claimant told Ms. Fullenkamp to "shut up."

The claimant then spoke to the administrator, Barb Whitten, who asked the claimant to come in for a meeting. The meeting took place at approximately 1:00 p.m. Sarah Pezley, another supervisor, was present, as the claimant did not want Ms. Fullenkamp there. At the meeting, the claimant was terminated for being insubordinate to her supervisor.

## **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.

Misconduct that warrants termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. An isolated instance of poor judgment or unsatisfactory conduct is not misconduct within the meaning of the statute.

The evidence in this case showed that the claimant used poor judgment when speaking with her supervisor on May 28, 2009. The claimant had been working all night and had been expecting her relief at 8:00 a.m. She acknowledged that she was tired. The claimant was frustrated and inappropriately expressed that frustration to her supervisor. The events of May 28, 2009, however, appear to have been an isolated instance as opposed to a general pattern of conduct. The administrator testified that what occurred on May 28, 2009, was the only reason for the claimant's termination.

While the claimant's conduct may have justified termination, the employer has not shown misconduct that disqualifies the claimant from receiving unemployment benefits. Benefits are allowed, if the claimant is otherwise eligible.

**DECISION:**

The decision of the representative dated June 23, 2009, reference 01, is reversed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/kjw