

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KERSTY L DOWNING

Claimant

APPEAL NO. 06A-UI-10489-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOOD SAMARITAN SOCIETY INC

Employer

**OC: 10/01/06 R: 03
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated October 19, 2006, reference 03, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on November 9, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing. Fred Metcalf participated in the hearing on behalf of the employer with a witness, Angela Prevo. Exhibits One through Six were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a certified nursing assistant (CNA) from April 24, 2006, to September 28, 2006. The claimant was informed and understood that under the employer's work rules, grounds for discipline included threatening physical violence toward a coworker inconsiderate and neglectful treatment of residents. The claimant had been verbally counseled about not changing residents and not promptly responding to call lights.

On September 24, 2006, the claimant was working with another CAN, Kimberly Schleiger, during a shift change going to rooms to check residents. They both entered a room at the same time and nearly collided, and Schleiger believed the claimant stepped in front of her intentionally, which was not the case. While in the room, the claimant noticed the resident did not have any briefs to change into. The claimant asked another CNA to get a brief. Schleiger told the claimant that she was not going to wait around because they had other residents to change. When the claimant went to cover the resident back up, Schleiger left and went to the next room. The claimant heard Schleiger ask the other CNA in an annoyed tone whether the claimant was coming. The claimant replied that she was coming. When the claimant entered the room, Schleiger approached her and began yelling at her. Schleiger then said "let's just drop it." The claimant responded "Yes, I agree." She raised her open hand up in front of her and told Schleiger to back off because Schleiger was still close to the claimant. The claimant

did not intend to hit or threaten Schleiger. Schleiger reported to supervisors that the claimant had yelled at her and threatened to hit her.

On September 27, 2006, a CNA found the call light for a resident that the claimant was caring for that had fallen down between the side rail and mattress. The CNA reported what she had found and the supervisors believed the claimant had attempted to hide the call light so she would not have to respond to this resident's calls. The claimant did not do anything to hide this resident's call light or make it inaccessible.

On September 28, 2006, the employer discharged the claimant for her conduct toward Schleiger on September 24 and because the employer believed the claimant was responsible for the call light being inaccessible to the resident on September 27.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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 substantial and 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).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and the reliability of the evidence and by applying the proper standard and burden of proof. The employer's evidence consisted of hearsay statement from individuals who were not under oath or present at the hearing to testify and answer questions. The claimant, on the other hand, testified credibly about the events on September 24 and 27, and there is nothing upon which to find her testimony untruthful. Her evidence is entitled to more weight than the employer's evidence. No willful or substantial misconduct has been proven in this case. Work-connected misconduct as defined by the unemployment insurance law has not been established.

DECISION:

The unemployment insurance decision dated October 19, 2006, reference 03, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw