

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARY L SLEETH**  
Claimant

**APPEAL NO: 11A-UI-00728-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MOSAIC**  
Employer

**OC: 10/31/10  
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's January 13, 2011 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for non disqualifying reasons. Telephone hearings were held on February 23 and March 14, 2011. The claimant participated in the hearings with her attorney, Eric Eshelman. Tom Kuiper represented the employer. Shanda Hiatt, the human resource manager; Tammy Fulkerson, a direct support coordinator; Chris Wilhelm, another director support coordinator and the claimant's supervisor; and Stephanie Gehlhaar, the executive director, appeared on the employer's behalf. During the hearings, Employer Exhibits One through Four and Claimant Exhibit A were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

**ISSUE:**

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

**FINDINGS OF FACT:**

The claimant started working for the employer in February 2001. The claimant started working as a direct support manager in November 2009. Wilhelm supervised her.

After the claimant became a manager, she received written warnings on May 19, July 27 and October 5, 2010. (Employer Exhibit Three.) The claimant received the written warnings for failing to update a supervisor about the status of some tasks before she took some time off, for failing to immediately report to a home after learning that a client had left the home, and for failing to timely turn in time sheets.

The employer gave the claimant her performance evaluation on October 20, 2010. The evaluation primarily noted the claimant performed her job satisfactorily. The employer, however, noted she needed to improve one of her essential job functions – managing program operations by following all policies and procedures. In her general job function, the employer noted the claimant needed to improve her time management skills and follow safety procedures

and policies. The employer also indicated the claimant still needed to provide clients one new activity during the next year. (Claimant Exhibit A.) Based on this evaluation, the claimant understood her job was satisfactory but she needed to crack down on employees she supervised to make sure they did their job correctly. The claimant had no understanding her job was in jeopardy.

On November 4 the claimant worked direct care hours when she reported to work at 4:20 p.m. When Fulkerson came to the home, she heard voices in the kitchen. Even though Fulkerson assumed the claimant and two other employees did not know when she came to the home, the claimant did. The claimant was in the kitchen trying to explain to an employee why she could not substitute a fruit for a vegetable for lunch the next day. The claimant believed a third employee in the kitchen periodically checked the rest of residents while the claimant was explaining menus to another employee. The claimant was in the kitchen 15 to 20 minutes, longer than she thought she had been. When she was done explaining what could and could not be substituted at lunch, she left the kitchen. Fulkerson assumed the claimant left the kitchen only after she realized Fulkerson was at the home.

Fulkerson was at the group home for 20 minutes before the claimant came out of the kitchen. During this time, Fulkerson noted one resident was in his room for 20 minutes with no staff interaction. Three other residents were left alone for 15 minutes with no staff interaction. Another resident did not have his communication program activated or running. Fulkerson understood the employer's policy required staff to interact with clients at least once every ten minutes. The claimant understood staff was required to interact with residents every 15 minutes. When the claimant left the kitchen, Fulkerson talked to her about a client's communication program. The claimant indicated she would get it started and did.

After Fulkerson reported her observations to management, (Employer Exhibit Two), the employer concluded the claimant and staff employees failed to support the individuals at the home on November 4. Even though the claimant was not working as a supervisor on November 4, the employer held her to a higher standard because she was a manager. The employer discharged the claimant on November 6 for failing to follow or provide active treatment to the residents at the home. The claimant understood she was discharged because the employer concluded she was not concerned about clients' safety.

#### **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).

The employer established business reasons for discharging the claimant. The claimant's work may not have been satisfactory on November 4 when Fulkerson was at the home, but she did not intentionally disregard the employer's interests when she was in the kitchen explaining to an employee why a fruit could not be substituted for a vegetable. While the claimant was in the kitchen, she believed another staff person went out and periodically checked on residents. The claimant may have used poor judgment when she did not make sure another staff person not only checked on residents, but also interacted with them.

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). Even though the claimant received previous written warnings, she had not previously received a written warning for a similar incident. While the employer may not have been satisfied with the claimant's work performance, she was acting as a supervisor on November 4 by explaining why an employee could not substitute one food group for another. The claimant's mistake was taking too long to explain this to an employee and failing to make sure another employee interacted with clients when she was in the kitchen. The claimant did not commit a current act of work-connected misconduct. As of October 31, 2010, the claimant is qualified to receive benefits.

**DECISION:**

The representative's January 13, 2011 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons. These reasons do not constitute a current act of work-connected misconduct. As of October 31, 2010, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

---

Debra L. Wise  
Administrative Law Judge

---

Decision Dated and Mailed

dlw/pjs