

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

RUTH BLACK
APT #309
2525 GRAND AVE
DES MOINES IA 50312

SCOTTISH RITE PARK INC
2909 WOODLAND AVE
DES MOINES IA 50312

Appeal Number: 06A-UI-04425-DWT
OC: 04/02/06 R: 02
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:

Scottish Rite Park, Inc. (employer) appealed a representative's April 21, 2006 decision (reference 01) that concluded Ruth Black (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 May 9, 2006. The claimant participated in the hearing. Kim Vanderheiden, the director of health care services, 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 May 23, 1997. The claimant worked as a full-time certified nursing assistant. Vanderheiden became the claimant's supervisor in mid-January 2006, when she became the director of health care services.

During her employment, the claimant became upset and voiced her concerns when she observed and reported incidents she believed amounted to verbal and/or physical abuse. The claimant acknowledged she may have raised her voice and become upset when she observed these incidents and reported them to management.

Prior to March 23, 2006, the claimant's job was not in jeopardy and Vanderheiden did not know that some employees considered the claimant mean and rude. The claimant, however, thought her job was in jeopardy after she complained about how some employees were constantly on their cell phone. A resident even warned the claimant to watch out for a couple of employees.

On March 16, the claimant was working with her assigned residents when J.M., a family member of a resident, asked the claimant if she knew who was assigned to her aunt because she wanted to go to bed. The claimant did not know who was assigned to help J.M.'s aunt. After the claimant finished caring for a resident, she saw J.M. talking to another resident. When J.M. indicated that this resident wanted to go to bed also, the claimant told J.M. she would take care of this resident. The claimant pushed the resident's wheelchair back into the resident's room. While doing this the claimant noticed that J.M. was still in the hall. J.M.'s gestures made it apparent that J.M. was frustrated and getting impatient because no one was helping her aunt. As the claimant pushed the resident into her room, she pushed the door to shut it. Instead of shutting quietly, the door slammed shut. The claimant was surprised when the door slammed shut. The resident had her window open. The claimant concluded the open window created a suction, which resulted in the door slamming shut. After the claimant had taken care of the resident, she went to talk to J.M. The claimant did not see J.M. the rest of the evening.

J.M. complained about the way the claimant treated her. J.M. reported that the claimant's comments and actions were rude and unprofessional. J.M. also concluded that the claimant had deliberately slammed the resident's door in J. M.'s face. J.M. considered the slamming of the door as threatening behavior directed toward her.

Vanderheiden learned about the complaint on March 18, 2006. The employer talked to J.M. and asked her to write a written complaint. On March 23, 2006, the employer discharged the claimant for rude behavior and inappropriate conduct toward a family member of a resident on March 16, 2006.

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 compelling business reasons for discharging the claimant. Based on the family member's complaint the employer concluded the claimant acted inappropriately and was very rude to this person on March 16, 2006. For unemployment insurance purposes, the facts do not establish that the claimant was intentionally rude and she did not intentionally slam a door shut. The claimant's testimony as to what happened on March 16 must be given more weight than the employer's reliance on hearsay information from a family member who did not testify at the hearing. As a result, the facts do not establish that the claimant committed work-connected misconduct. Therefore, as of April 2, 2006, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's April 21, 2006 decision (reference 01) is affirmed. The employer discharged the claimant for compelling business reasons that do not constitute work-connected misconduct. As of April 2, 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