

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**COLLEEN L HACKLEY**  
Claimant

**APPEAL NO. 11A-UI-03813-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ABCM CORPORATION**  
Employer

**OC: 02/13/11  
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the March 21, 2011 (reference 01) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on April 15, 2011. Claimant participated. Employer participated through Human Resources Assistant Erin Neubauer.

**ISSUE:**

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full-time as a CNA and was separated from employment on February 12, 2011. On February 11 a resident identified claimant as a person who had been rough with her. Director of Nursing Julie Lane and Administrator Kathy Myer-Albee and the Franklin County sheriff's office investigated. None of them participated in the hearing. The resident was cognitive and was able to identify the claimant but had complained she was rough while drying her legs with a towel and said nothing about her arms. Another aide took the resident to the other room to help her finish her bath cares. The deputy took photographs of bruising on the resident's arms but indicated to the claimant it was old and would not have happened that day. There was no evidence presented of any bruising or other concerns about the resident's legs. On April 12, 2010, the DON warned claimant about ambulating a resident with a gait belt and had the resident hang on to a hand rail while going into a room to retrieve a wheelchair. The resident initially said he was okay to walk but changed his mind after they left the room after physical therapy. No one was available to help and there was no radio system to call for help. On November 5, 2010, claimant did not use a safety belt while bathing a resident seated on a shower chair and the resident slipped out of the chair. The claimant was warned for this and also for failure to knock before entering the resident room. The shower chair tipped after catching on a towel. The resident refused to wear the safety belt and had waved claimant into the room where the door was open.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). When the record is composed solely of hearsay evidence, that evidence must be examined closely in light of the entire record. *Schmitz v. IDHS*, 461 N.W.2d 603, 607 (Iowa App. 1990). Both the quality and the quantity of the evidence must be evaluated to see whether it rises to the necessary levels of trustworthiness, credibility, and accuracy required by a reasonably prudent person in the conduct of serious affairs. See, Iowa Code § 17A.14 (1). In making the evaluation, the fact-finder should conduct a common sense

evaluation of (1) the nature of the hearsay; (2) the availability of better evidence; (3) the cost of acquiring better information; (4) the need for precision; and (5) the administrative policy to be fulfilled. *Schmitz*, 461 N.W.2d at 608.

In an at-will employment environment, an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. While the allegation is very serious, the employer assumed the issue was related to the bruising on the resident's arms, which was caused before the date of the allegation, and the employer failed to present sufficient evidence to establish that there was any misconduct related to claimant drying the resident's legs or defining what the resident meant by "rough." The entirety of the evidence supporting the separation was based upon hearsay, not just of the resident, but of the DON and administrator, and did not rise to the level of disqualification. The other issues were adequately rebutted and did not have any relation to alleged roughness or abuse. Benefits are allowed.

**DECISION:**

The March 21, 2011 (reference 01) decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed. The benefits withheld shall be paid, provided the claimant is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/kjw