

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHIRLEY A JOHNSON
Claimant

BLACK HAWK COUNTY
Employer

APPEAL 18A-UI-05247-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 08/27/17
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 30, 2018, (reference 02) unemployment insurance decision that denied benefits based upon a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on May 24, 2018. Claimant participated. Employer participated through human resources specialist Amanda Fesenmeyer and provisional administrator Carol Laurie. Assistant Administrator Sheri Sigler observed.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on September 17, 1991. Claimant was separated from employment on April 10, 2018, when she was terminated.

Employer operates an intermediate care facility for the intellectually disabled. Claimant was assigned to work at the facility as a full-time developmental aide.

Employer has a policy prohibiting abuse of residents. The policy prohibits any action intended to cause pain or injury to a resident, any physical contact considered by a reasonable person to be insulting or offensive, or any act that creates immediate fear of physical contact which would be dangerous, insulting, or offensive to a resident. Claimant was last trained on this policy on May 31, 2017.

On April 7, 2018, claimant was working with five residents and one other staff member. The residents were finishing their noon meal. The other staff member exited the room, which left claimant alone with five residents from 12:30 p.m. until 1:15 p.m. During that time, claimant was attempting to assist a male resident in using the restroom. A female resident was intently focused on closing the restroom door, which made it difficult for claimant to assist the male resident into the restroom. Claimant touched the female resident 19 times during a 45-minute time period in an attempt to remove her from the restroom door area. Claimant pushed the female resident in the chest three times. The female resident bumped into the wall and the door on two occasions, and fell onto the floor on one occasion. Claimant did not assist the resident

in getting up from the floor or notify a nurse the resident had fallen. Claimant also took the female resident's security and comfort items and threw them against the wall and out of the room. During this time period claimant never contacted another staff member to help her with the situation.

After lunch ended, another employee suspected the female resident had fallen. At 1:50 p.m. the employee contacted the on-call supervisor and reported the suspicion. The supervisor came into work and viewed the surveillance footage which showed claimant repeatedly pushing and touching the female resident. The supervisor suspended claimant that day after viewing the video.

Employer terminated claimant's employment on April 10, 2018, for violating its policy prohibiting abuse of residents.

Claimant had never been previously disciplined for violating that policy, although she had been previously given written warnings for violating employer's professionalism policy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 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 Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. 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. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

In this case, claimant repeatedly touched and pushed a dependent adult resident when the resident did not follow her instructions. The resident fell to the floor and claimant did not attempt to assist her or notify a nurse of the fall. Claimant also threw the resident's comfort items against the wall and out the door. Claimant did not call a staff member for help. Claimant's actions were in deliberate disregard of employer's interests and violated its policy prohibiting abuse of residents. Employer established claimant was terminated for misconduct.

DECISION:

The April 30, 2018, (reference 02) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Christine A. Louis
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Decision Dated and Mailed

cal/scn