

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VELMA D HAYNES
Claimant

APPEAL NO. 09A-UI-03156-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HANDICAPPED DEVELOPMENT CENTER
Employer

**Original Claim: 01/18/09
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Velma D. Haynes (claimant) appealed a representative's February 19, 2009 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Handicapped Development Center (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 24, 2009. The claimant participated in the hearing. Linda Gill appeared on the employer's behalf. During the hearing, Employer's Exhibits One through Five were entered into evidence. Based on the evidence, the arguments of the parties, a review of the law, and assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on April 27, 2005. She worked full time as a resident aide in the employer's ICFMR (intermediate care facility for mentally retarded). Her last day of work was January 21, 2009. The employer discharged her on that date. The reason asserted for the discharge was the assertion that the claimant had slapped a resident's hand on January 18.

The claimant denied slapping the resident's hand when she was first informed of the allegation on January 21, and further denied slapping the resident's hand in her sworn testimony at the hearing. The reason the employer believed the claimant had slapped a resident's hand was that another aide had provided a written statement asserting that she had been present when this had happened. The claimant noted that the aide who provided the statement had not been the aide even in the room when the claimant was working with the resident, as that aide was under lifting restrictions and could not have been assisting the claimant in lifting the resident for bathing as asserted in the aide's statement. The claimant acknowledged that the resident had

grabbed at a shower curtain while being bathed and that she had quickly pulled the curtain out of his hands, but adamant that she had not hit the resident's hand while doing so.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, 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 is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is the belief she had slapped a resident's hand on January 19. The employer relies exclusively on the second-hand account from the other aide; however, without that information being provided first-hand, the administrative law judge is unable to ascertain whether the other aide might have been mistaken, whether she was actually present or how she observed the alleged incident, or whether she is credible. The claimant provided credible first-hand testimony denying slapping the resident, which was consistent with her initial denial when confronted by the employer. No witness was available at the hearing to provide testimony to the contrary under oath and subject to cross-examination. The employer has not established by a preponderance of the evidence that the claimant did slap the resident and has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's February 19, 2009 decision (reference 01) is reversed. The employer did discharge the claimant, but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw