

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOLENE M DROZ-HUMES
Claimant

APPEAL NO: 13A-UI-03475-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OPTIMAE LIFESERVICES INC
Employer

OC: 02/17/13
Claimant: Appellant (2)

Iowa Code § 96.5(2) – Suspension/Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's March 19, 2013 determination (reference 03) that denied her benefits as of February 17, 2013, because she still worked the same hours and wages the employer had hired her to work. The claimant participated in the hearing. The employer did not respond to the hearing notice or participate in the hearing. Based on the evidence, the claimant's arguments, and the law, the administrative law judge concludes the claimant is qualified to receive benefit as of February 17, 2013.

ISSUES:

As of February 17, 2013, is the claimant working the same hours the employer hired her to work?

Was the claimant suspended and/or discharged for disqualifying reasons?

FINDINGS OF FACT:

The claimant started working for the employer on May 31, 2012. She managed a group home. A new client reported the claimant sexually abused him. The client made this accusation after he became upset with claimant for asking him if he needed a ride back to the group home while he was talking to another person. The claimant and client engaged in a verbal confrontation. On this day the client had not taken his medication for schizophrenia. The confrontation between the claimant and client occurred in the presence of an employee from another group home. The claimant did not sexually abuse the client.

The last day the claimant worked was February 14, 2013. The employer suspended the claimant on February 17, 2013, so the client's allegation could be investigated. The employer initially told the claimant she would remain on the schedule until the matter was resolved.

The claimant established a claim for benefits during the week of February 17, 2013, because she was on an unpaid suspension. On March 14, the claimant received a letter from the employer telling her that her position had to be filled and the employer had to end her

employment as of March 14, 2013. The employer also gave the claimant a letter informing the Department that the claimant's benefits could be released immediately.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer suspended or 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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The employer had business reasons for suspending and discharging the claimant. The evidence does not establish that the claimant committed work-connected misconduct. As of February 17, 2013, the claimant is qualified to receive benefits.

DECISION:

The representative's March 19, 2013 determination (reference 03) is reversed. The employer suspended and then discharged the claimant for business reasons, but the evidence does not establish that the claimant committed work-connected misconduct. As of February 17, 2013, 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/css