

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MORLU SAMA
Claimant

APPEAL NO: 08A-UI-08684-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RESCARE INC
Employer

**OC: 07/27/08 R: 02
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Morlu Sama (employer) appealed an unemployment insurance decision dated September 23, 2008, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Rescare, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 14, 2008. The claimant participated in the hearing. The employer participated through Sue Branstetter, Service Coordinator and Ida Newquist, Office Manager. Employer's Exhibits One through Four were admitted into evidence. 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:

The issue is whether the employer discharged the claimant for work-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired as a part-time community support staff member on January 10, 2008. She worked at 24-hour residential site providing care for three consumers diagnosed with psychiatric disabilities until she was discharged on July 30, 2008. The claimant received a call from the police on the evening of July 29, 2008 telling her that a window had been broken at her home where her children were alone. The claimant testified she needed to go home and tried to call the on-call person but could only leave a message. The claimant testified she called the service coordinator, Sue Branstetter, who refused to come since she lives 45 minutes away. One of the consumers could be left alone but the other two consumers could not be so she left the one consumer at the residential facility while she took the other two with her. She returned to the facility a short time later.

Ms. Branstetter admitted she does live 45 minutes away from work but contends the claimant never called her. Ms. Branstetter testified that the consumer who was alone called her and said that the claimant told her to lie if anyone asked where the claimant went. The team leader later

went to the facility and talked to the claimant and the consumers. The claimant was discharged the following day for unethical conduct.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. 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.

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 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 substantial and 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 claimant was discharged for unethical conduct when she made a poor choice of judgment. She testified she tried to find a replacement before leaving on July 29, 2008 but was unable to

get anyone and her testimony is credible. Under the circumstances of this case, the claimant's conduct was at worst the result of unsatisfactory conduct, inadvertence or ordinary negligence in an isolated instance or a good faith error in judgment or discretion. Work-connected misconduct as defined by the unemployment insurance law has not been established in this case and benefits are allowed.

DECISION:

The unemployment insurance decision dated September 23, 2008, reference 01, is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs