

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**THOMAS E KINSELLA**  
Claimant

**APPEAL NO. 13A-UI-08779-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SPECIALIZED SUPPORT SERVICES INC**  
Employer

**OC: 06/30/13**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated July 26, 2013, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on September 4, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Teresa Hartman participated in the hearing on behalf of the employer with witnesses, Carol Bates, Karen Batten, and Robert Mailander. Exhibit One was admitted into evidence at the hearing.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

Thomas Kinsella worked as a direct care worker for the employer providing daily living assistance and supervision for mentally disabled clients from January 5, 2012, to May 21, 2013. He received a warning in June 2012 for cursing while speaking to clients. He was informed and understood that under the employer's work rules, he was allowed to leave clients unsupervised.

On May 19, 2013, the claimant was assigned to work at a home with two clients who require 24-hour supervision. He was scheduled to work from 8:00 a.m. to 3:00 p.m. He left the home at noon without notifying anyone with the employer. He had not checked on the clients who had not come out of their rooms while he was there. One of the clients notified the employer that the claimant had left.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the

contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's assertion that he did not know he could not leave the home before 3:00 p.m. is not believable. He knew that he was supposed to work until the 3:00 p.m. employee came on duty.

The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

**DECISION:**

The unemployment insurance decision dated July 26, 2013, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/css