

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BOBBIE J ADCOCK
Claimant

APPEAL NO. 10A-UI-13058-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**GOOD SAMARITAN SOCIETY
HOME HEALTH**
Employer

OC: 08/15/10
Claimant: Respondent (1)

Section 96.5-2-a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's September 8, 2010 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for non-disqualifying reasons. The claimant participated in the hearing. Cheryl Williams, a human resource associate, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working as a full-time CNA for the employer in August 2005. Prior to August 14, 2010, the claimant knew or should have known her job was in jeopardy because of attendance issues.

On August 14, the claimant helped a resident stand so the resident could put on a long-sleeved shirt. The resident wanted his medication, but the claimant cannot give medication. The person who gives medication was training an employee and put off giving the medication to the resident because she was busy. The resident was upset that he did get his medication. While he was standing and the claimant was trying to help him put on his shirt, he yelled at the claimant and told her to leave. The claimant followed his instruction, which prevented her from helping him any more to put on his shirt.

Later, the employer received a written complaint from this resident that the claimant refused to help him put on a shirt. Although the claimant worked with the resident the next few days without any problems, on August 17 the employer gave her a warning for inconsiderate treatment of a resident. The employer concluded the claimant refused to help this resident put on a long-sleeved shirt on August 14. The employer discharged the claimant for the August 14 incident.

REASONING AND CONCLUSIONS OF LAW:

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

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

If the claimant left before the resident had his shirt on, she used poor judgment when she followed the resident's directive to get out when he was upset about his medication. Since the claimant was not authorized to give any medication, the claimant was in a no-win situation with the resident. The resident had a right to tell her to leave, but he also needed someone to help him get his shirt on. It is not known if the resident decided on his own to complain or if someone asked him to make the complaint. Regardless of what prompted the complaint, since he did not testify at the hearing, the claimant's testimony as to what happened on August 14 must be given more weight than the employer's reliance on the resident's hearsay information or complaint. The evidence does not establish that the claimant intentionally disregarded the resident's needs. Instead, she followed his directive. The claimant did not commit work-connected misconduct. Therefore, as of August 15, 2010, the claimant is qualified to receive benefits.

DECISION:

The representative's September 8, 2010 determination (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of August 15, 2010, 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/kjw