

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SARAH J DELARM
Claimant

APPEAL NO. 07A-UI-09791-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DAC INC
Employer

**OC: 09/16/07 R: 04
Claimant: Respondent (2)**

Iowa Code § 96.5(2)a – Discharge/Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 15, 2007, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on November 26, 2007. Claimant participated. Employer participated through Tina Miller and Sara Tubbs.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits and if so, whether she is overpaid benefits as a result.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full time supported living specialist from June 23, 2006 until September 19, 2007 when she was discharged. On September 16 she observed two other staff members, Amanda and Fawn, involved in a disciplinary hold of a mentally impaired resident, Shawn, when Fawn asked her to help. When she went to assist, the resident grabbed her neck, she backed away causing her blouse to rip, and she said to the resident, "You bitch." She did not use alternative direction such as "no", "stop", or "don't do that." Amanda and Fawn reported the incident to supervisor, Brenda Behrens. Abusive language towards residents is grounds for termination upon a first offense.

Employer issued a written warning within her probationary period on August 25, 2006 after she was overheard raising her voice at residents and telling them she would take residents to Wal-Mart if they behaved. Claimant was evaluated in June 2007 and scored a 2 of 5 (5 being the highest possible score) in the category of using professional ethics to carry out job duties. The evaluator also noted she had been overheard telling individuals, "I am the only one right here."

The claimant has received unemployment benefits in the amount of \$1,000.00 since filing a claim with an effective date of September 16, 2007.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

Claimant's use of abusive language, even upon the first occasion, but also in conjunction with her earlier departure from appropriate resident instruction and interaction, amounts to job-related misconduct. Benefits are denied.

Iowa Code § 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be

credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The October 15, 2007, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,000.00.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css