

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANNE M MONTAG
Claimant

APPEAL NO: 06A-UI-08954-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE BOYLE COMPANY INC
Employer

**OC: 08/13/06 R: 01
Claimant: Appellant (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Anne M. Montag (claimant) appealed a representative's August 31, 2006 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of The Boyle Company, Inc, doing business as, Sunny Knoll Care Centre, (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 21, 2006. The claimant participated in the hearing. Patrick Luft, Nadine Henningsen and Roger Jensen appeared on the employer's behalf. During the hearing, Employer Exhibit One was offered and admitted as 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:

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

FINDINGS OF FACT:

The claimant started working for the employer on April 10, 2003. The claimant worked as the facility's full-time administrator. Luft supervised the claimant.

The employer did not address any behavioral or unprofessional conduct with the claimant until May 2006. After the employer received complaints that the claimant slammed doors and threatened to discharge employees in the dining area with other people present, the employer talked to the claimant in early May about her unprofessional conduct at work. (Employer Exhibit One.) The claimant indicated she recognized her personality had changed in that she was no longer a cheerful administrator. The claimant had gone to her physician concerning her personality change. On May 23, 2006, the employer gave the claimant a final written warning for failing to follow the employer's policy when disciplining employees and for continued unprofessional behavior. (Employer Exhibit One.)

On August 8, 2006, state officials inspected the employer's facility. When the director of nursing and the state inspectors could not find some information, the director of nursing contacted the quality assurance nurse, J. Although J. was not scheduled to work, she came to the facility to provide the requested information. At that time, she saw a memo the claimant had given to employees. J. responded to the memo by writing her comments on it and then left her comments on the claimant's desk. When the claimant came to work on August 9, she saw J's comments. The claimant became upset because J. did not appear to take responsibility for some problems the claimant had noted. While the claimant was upset, she called J. at her home to reprimand her over the phone. During this reprimand, the claimant accused J. of being responsible for three out of four deficiencies the state inspectors gave the facility. The claimant also told J. to get her head out of her **#\$%. The claimant called Luft to report her conversation with J. Luft reminded the claimant to keep her cool.

As a result of the claimant's phone call, J's husband came to the facility very upset and handed in J's resignation. J's husband was so upset with the treatment J received at work, he accused the employer of a hostile work environment. After Henningsen told him that his shouting upset the residents, he left.

Henningsen then contacted Luft to inform him about the incident. When Luft arrived at the facility later in the afternoon, he talked to the employees. Employees reported how the claimant continued to raise her voice and yell at employees in the presence of others and that employees felt like they were walking on eggshells at work because no one knew how the claimant would react to a situation.

The employer concluded that even though the employer warned the claimant about her unprofessional treatment of employees, the claimant did not change. The employer discharged the claimant on August 10, 2006. The employer discharged the claimant for her unprofessional conduct and the way in which she treated J. over the phone on August 9.

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. 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).

The claimant knew or should have known her job was in jeopardy after the employer gave her the May 23, 2006 final warning. While the claimant believed that as the administrator she had to be strict with employees, the employer warned her in May she had to follow the employer's policies when disciplining an employee. The employer also emphasized that she must treat employees with dignity and respect and that she was responsible for promoting teamwork.

The claimant's behavior on August 9 when she "blew up" at J. for leaving comments about the claimant's memo amounts to an intentional and substantial disregard of the standard of behavior the employer had a right to expect from the claimant, the administrator of the facility. As the administrator, the claimant is held to a higher standard of behavior than the employees

she supervises. After the claimant lost her "cool" on August 9 and again failed to follow the employer's disciplinary procedures, the employer discharged the claimant for reasons constituting work-connected misconduct. As of August 13, 2006, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's August 31, 2006 decision (reference 01) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of August 13, 2006. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw