IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

PAULA R BARKALOW
PO BOX 143
MUSCATINE IA 52761

RESCARE INC
C/O MARIE SHEFELBINE
301 W BURLINGTON ST
FAIRFIELD IA 52556

Appeal Number: 04A-UI-03113-CT
OC: 02/15/04 R: 04
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319***.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Rescare, Inc. filed an appeal from a representative's decision dated March 11, 2004, reference 01, which held that no disqualification would be imposed regarding Paula Barkalow's separation from employment. After due notice was issued, a hearing was held by telephone on April 13, 2004. Ms. Barkalow participated personally. The employer participated by Jeri Crile, Human Resources Assistant, and Nancy Nauman, Director of Rescare Muscatine. Exhibits One through Four were admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Barkalow was employed by Rescare, Inc. from July 7, 2002 until February 10, 2004. She was last employed full time as a residential aide.

The final incident which triggered the decision to discharge occurred on January 31. Ms. Barkalow was sent to the pharmacy and allowed her daughter and the daughter's friend to ride with her in the company vehicle when she went to the pharmacy. The employer's written policies do not prohibit employees from transporting individuals unrelated to Rescare, Inc. The employer's policy only disavows liability for injuries sustained by non-employees being transported in company vehicles.

In making the decision to discharge, the employer also considered the fact that Ms. Barkalow had received a verbal warning on October 30, 2003 because of an allegation that she cancelled services for a client. Ms. Barkalow had received a written warning on November 18, 2003 because of inaccuracies in her documentation regarding time spent with clients.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Barkalow was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Past acts of misconduct may be considered in determining the magnitude of a current act of misconduct. However, unless the final act which caused the discharge constituted misconduct within the meaning of the law, no disqualification may be imposed. See 871 IAC 24.32(8).

In the case at hand, the final act which triggered Ms. Barkalow's discharge was the fact that she was transporting non-employees in the company vehicle. The employer's policies neither expressly nor impliedly prohibit non-employees from riding in company vehicles. By disavowing liability for injuries sustained by non-employees, the employer is implying that it is not against policy to transport those individuals, only the employer will not be liable if they are injured while riding in the vehicle. The employer's policy could as easily have said that transporting non-employees is prohibited if that was the employer's intent. However, the policy is not worded as a strict prohibition. For the above reasons, the administrative law judge concludes that Ms. Barkalow did not violate policy by transporting her daughter and her daughter's friend on January 31. As such, her actions did not constitute an act of misconduct.

Inasmuch as the final act which caused Ms. Barkalow's discharge did not constitute misconduct within the meaning of the law, the administrative law judge is not free to consider other, past acts, which might constitute misconduct. It must be concluded, therefore, that disqualifying misconduct has not been established and benefits are allowed.

DECISION:

The representative's decision dated March 11, 2004, reference 01, is hereby affirmed. Ms. Barkalow was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/kjf