

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHEILA M LAURIE**  
Claimant

**APPEAL NO. 09A-UI-03400-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WESLEY RETIREMENT SERVICES INC**  
Employer

**OC: 02/08/09**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Sheila Laurie (claimant) appealed a representative's February 27, 2009 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Wesley Retirement Services (employer) for conduct not in the best interest of the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 30, 2009. The claimant participated personally. The employer participated by Stephanie Hamlin, Team Leader, and Betty Stone, Director of Human Resources.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on August 11, 2008, as a full-time homemaker. The employer issued the claimant a verbal warning on December 4, 2008, and a written warning on December 8, 2008, for having a male accompany the claimant to work. The claimant denied the event ever occurred. On January 28, 2009, the employer issued the claimant a written warning for failing to clean rooms. The claimant does not remember receiving the warnings. The employer notified the claimant that further infractions could result in termination from employment.

On February 2, 2009, the claimant arrived at a client's house to perform work. The client had the inauguration on television. The client turned the television down so the claimant could call into work. Later on February 3, 2009, the client complained to the employer that the claimant watched television and did not perform the work requested. The employer questioned the claimant and denied the allegations. The employer terminated the claimant on February 6, 2009.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant is eligible to receive unemployment insurance benefits.

Iowa Code section 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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

**DECISION:**

The representative's February 27, 2009 decision (reference 01) is reversed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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