

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CAROLYN J DOHRER-THEISEN
Claimant

APPEAL NO. 14A-UI-01734-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**RESIDENTIAL ALTERNATIVES OF IOWA
WINDMILL MANOR**
Employer

OC: 01/12/14
Claimant: Appellant (1)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Carolyn Dohrer-Theisen (claimant) appealed a representative's February 6, 2014, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Residential Alternatives of Iowa (employer) for conduct not in the best interests of the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 7, 2014. The claimant participated personally. The employer participated by Stacey Cremeens, Administrator; Ruth Kellner, Nurse Manager; and Arllen Torres, Personal Assistant

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 March 24, 2008, as a full-time resident assistant working the night shift. The claimant signed for receipt of the employer's handbook on March 24, 2008. In September 2013, the nurse manager asked the claimant if she would like to work days. The claimant told the nurse manager it was not the time for her to work days. The claimant wanted to work nights. At the beginning of November 2013, the claimant told the nurse manager that her husband wanted her to work days. The nurse manager told the claimant there was not an opening for day shift at that time. After this, the claimant pushed the nurse manager to let her work days.

On November 18, 2013, the claimant was loud and aggressive with the nurse manager regarding the topic of working the day shift. After thirty minutes, the nurse manager had a call from a physician and told the claimant she had to end the call. The nurse manager said goodbye but the claimant kept talking. On November 19, 2013, the nurse manager issued the claimant a reprimand and three-day suspension for her work performance and disrespectful behavior. The nurse manager notified the claimant that further infractions could result in termination from employment. The claimant refused to sign for receipt of the warning.

Later in November 2013, the nurse manager agreed the claimant could work the day shift but there were scheduling issues. On November 30, 2013, the claimant talked about work issues in a loud and aggressive tone with the nurse manager in front of a resident. On December 1, 2013, the nurse manager issued the claimant a written warning for taking about work issues in front of a resident and being discourteous to the nurse manager. The employer notified the claimant that further infractions could result in termination from employment. The claimant refused to sign for receipt of the warning.

On December 13, 2013, a co-worker gave the employer a written statements indicating she was working in a hostile and uncomfortable work environment due to the claimant's actions. The claimant slammed things, complained about the co-worker's work, and complained about the nurse manager. The co-worker tried to stay away from the claimant but the claimant called, texted, and followed the co-worker around at work. The employer investigated. The claimant decreased her hours and used vacation around the holidays. The investigation was finally complete on December 31, 2013. The employer terminated the claimant on December 31, 2013, for failing to follow instructions in the performance of her job.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

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). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions with regard to signing for receipt of warnings, being courteous to co-workers and her nurse manager. The claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

The claimant's and the employer's testimony is inconsistent. The administrative law judge finds the employer's testimony to be more credible because it provided two witnesses and a statement to support its case.

DECISION:

The representative's February 6, 2014, decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css