

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RALPH E HYER
Claimant

APPEAL NO. 12A-UI-03281-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOOD SAMARITAN SOCIETY INC
Employer

OC: 02/12/12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated March 23, 2012, reference 01, which denied unemployment insurance benefits. After due notice was issued, a telephone hearing was held on April 17, 2012. The claimant participated. Participating as a witness was Debra Hyer, the claimant's wife and former dietary supervisor for the employer. The employer participated by Mr. David Williams, hearing representative, and witnesses Karen Mousel, administrator, and Connie Schachterle.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Ralph Hyer was employed by Good Samaritan Society, Inc. from November 12, 2008, until February 17, 2012, when he was discharged from employment. Mr. Hyer worked as a part-time dishwasher and was paid by the hour. His immediate supervisor was Karen Mousel, administrator.

Ralph Hyer was discharged based upon his failure to report allegations of suspected neglect or abuse to his supervisor or the facility's administrator as required by state regulations and Good Samaritan Society policies. Mr. Hyer was aware of his obligations and of mandatory reporting. The claimant had been trained on mandatory reporting requirements.

Mr. Hyer had learned of allegations of suspected neglect from a certified nursing assistant. The allegations were about how a resident had passed away under unusual circumstances. Although the allegations raised concern for Mr. Hyer, he did not report them to management as required but instead personally investigated by visiting with one or more other CNAs. The claimant did not completely dismiss the allegations as rumor and continued to discuss the matter away from work in the presence of his adult son and his son's wife, as well as with Debra Hyer. The matter was not reported to Ms. Mousel, Mr. Hyer's designated supervisor, and the

administrator of the facility. Management of Good Samaritan Society first learned of the serious allegations after a state surveyor had contacted the facility about the allegations.

Because of the serious nature of the allegations, the claimant's failure to report them to Ms. Mousel as previously instructed, and the dissemination of this information to other individuals outside of management, a decision was made to terminate Mr. Hyer from his employment.

It is the claimant's position that he is exempt from mandatory reporting as a part-time employee, that he dismissed the allegations as "rumor," and that by discussing the matter with his wife, who was the dietary supervisor, he had fulfilled his responsibilities to report the matter.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment benefits. It does.

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 this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits.

The focus is on deliberate or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa App. 1992).

The claimant in this case was discharged after the employer was reasonable in concluding that Mr. Hyer had failed to follow a known mandatory reporting requirement by failing to disclose to the home's administrator allegations of resident neglect or abuse. The claimant had been informed of allegations by a certified nursing assistant. Mr. Hyer had considered the allegations to be credible enough to speak to other CNAs about them; however, the claimant did not report them to the home's administrator as policy and the law required. The claimant knew or should have known that reporting them to his wife was not sufficient, as Debra Hyer was not the claimant's supervisor, and the claimant had been reminded two weeks before that Ms. Mousel was Mr. Hyer's designated supervisor at the facility.

The claimant's failure to follow a reasonable and known company requirement and mandatory reporting requirements showed a disregard for the employer's interests and standards of behavior that the employer had a right to expect of its employees under the provisions of the Employment Security Law. The claimant knew or should have known that he had an obligation to report the suspected neglect or abuse to his supervisor but did not do so. Benefits are withheld.

DECISION:

The representative's decision dated March 23, 2012, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw