

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NAOMI L NAMANNY**  
Claimant

**APPEAL NO: 09A-UI-19042-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ASSISTED LIVING CONCEPTS INC**  
Employer

**OC: 11/22/09**  
**Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The employer appealed a representative's December 11, 2009 decision (reference 01) that concluded the claimant was eligible to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. A telephone hearing was held on February 1, 2010. The claimant participated in the hearing with her attorney, Tom Anderson. Jennifer Gustafson, the wellness director, and Theresa Pudlo, a PSA, appeared on the employer's behalf. 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 March 16, 2005. The claimant worked as a full-time cook. Jennifer O'Neill, the resident director, supervised the claimant. The claimant understood employees could not physically or mentally abuse residents. The employer's policy informs employees that if they abuse a resident, they will be discharged.

On November 16, a PSA asked the claimant to talk to resident ZE. ZE had complaints about the food served to her and did not like the PSA's answers. The claimant went and talked to ZE. ZE told the claimant that she was disappointed. The claimant responded by telling her that she was disappointed with every meal. The claimant also told ZE she was sorry about her meal. ZE was upset because she wanted white bread and had been served wheat bread. The claimant told ZE she did not have white bread in the kitchen to serve her. When Pudlo and another PSA noticed ZE was visually upset, they took her back to her room. Pudlo thought the claimant raised her voice and talked to ZE in a condescending tone.

The incident was reported to the employer. O'Neill investigated the November 16 incident. When she talked to a resident who sat next to ZE, the resident reported that she felt the claimant had been nasty and made excuses when ZE had not been served the correct meal.

On November 17, the employer talked to the claimant about the incident. During the discussion the claimant became very upset. When the claimant talked to O'Neill on November 17, she made the comment that the employer should screen residents better so they did not get crabby old women. The claimant also made comments expressing her frustration with ZE because ZE continually complained about the food the employer (claimant) served.

The employer concluded the claimant had verbally abused ZE on November 16. Since this was a Class III violation, the employer discharged the claimant on November 17, 2009.

#### **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. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

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 employer discharged the claimant for compelling reasons. Even if the claimant raised her voice while talking to ZE, the claimant's choice of words may not have been appropriate, but the facts do not establish that she intentionally verbally abused a resident. When the claimant talked to ZE, the resident was already upset because she had not been served white bread. The claimant may have used poor judgment when she told ZE that she was always disappointed with the food, but the November 16 incident does not rise to the level of work-connected misconduct. As of November 22, 2009, the claimant is qualified to receive benefits.

**DECISION:**

The representative's December 11, 2009 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not rise to the level of work-connected misconduct. As of November 22, 009, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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