

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CLAIMANT
Claimant

APPEAL NO. 08A-UI-02553-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EMPLOYER
Employer

**OC: 02/17/08 R: 02
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated March 11, 2008, reference 01, that held the claimant ineligible for benefits based upon her separation from Iowa Department of Human Services. After due notice was issued, a hearing was held by telephone on April 1, 2008. The claimant participated personally. The employer participated in the hearing. Exhibits One through Eight were received into evidence.

The case contains material that is required by law to remain confidential as to the general public. The dependent adult abuse information provided in the hearing will only be made available to the parties to this proceeding and any others who are legally authorized to have access to the information pursuant to Iowa Code section 235B.6

ISSUE:

The issue in this matter is whether the claimant was discharged for intentional misconduct in connection with her work.

FINDINGS OF FACT:

Having heard the testimony and having considered all the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as an activity aide from November 21, 2000, until her termination from employment on February 14, 2008. The claimant worked full time and was paid by the hour. The claimant was aware that under law she could be terminated if she were found to have committed dependent adult abuse.

On or about February 14, 2008, the Iowa Department of Inspections and Appeals (DIA) determined that the claimant had engaged in abuse of a dependent adult based upon an incident that had occurred on or about October 24, 2007. During the incident, the claimant, who normally works as an activity aide, was required to drive a wheelchair-equipped van transporting patients. While one of the two patients on board was being unloaded, a second patient became agitated and the claimant went back to calm the patient. The access ramp on the van, at the time, was down and, unexpectedly, the patient released the breaks on his wheelchair, causing it to roll out of the van and to tip as the claimant attempted to gain control. The injuries suffered

by patient at the time subsequently resulted in his demise. Procedures for transporting clients require that the access ramp be up when wheelchairs are released. The claimant did not anticipate that the patient would release his wheelchair brakes as she was only attempting to calm his agitated state. Other employees of the agency who were nearby witnessed the event but did not come to the assistance of the claimant prior to the removal of the wheelchair brakes by the patient who ended up rolling out of the van.

The claimant did not have any history of abusing residents. Had the DIA not prohibited her continued employment, the employer would not have discharged the claimant. The incident had been referred to by the employer as a “terrible accident.”

REASONING AND CONCLUSIONS OF LAW:

An administrative agency making a determination regarding an unemployment compensation claim pursuant to Iowa Code section 96.6 is authorized to have access to dependent adult abuse information in those cases where the abuse is founded. Iowa Code section 235B.6(2)d(4). However, the administrative agency is prohibited from re-disseminating the information to individuals who would not otherwise have independent access to the information under section 235B.6.

Appeal hearings and records of Workforce Development are public records within the meaning of the Iowa Open Records Act (Iowa Code Chapter 22), the Iowa Administrative Procedures Act (Iowa Code Chapter 17A), and the Iowa Employment Security Law (Iowa Code Chapter 96). Pursuant to Iowa Code section 22.2(1), every person has the right to examine and copy a public record and to publish or otherwise disseminate a public record or information contained therein. The provisions of Iowa Code section 17A.12(7) require that contested case proceedings be open to the public. Unemployment appeals hearings are to be conducted pursuant to the provisions of Chapter 17A. Rules of Workforce Development require that administrative law judge decisions be maintained on file for public inspection. See 871 IAC 26.17(3).

The prohibition against re-disseminating dependent adult abuse information requires that the administrative law judge issue a determination that does not identify the parties. To do otherwise would necessarily involve re-dissemination of information required by law to remain confidential. A public decision shall be issued that does not identify the parties. A decision with identifying information will be issued to the parties. That decision and the hearing record, including the audio recording, shall be sealed and not publicly disclosed.

The claimant was discharged from her employment solely because of DIA’s finding of dependent adult abuse. An individual who is discharged from employment is disqualified from receiving job insurance benefits if the discharged was for misconduct. Iowa Code section 96.5(2)a. The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). While an employer may have good cause to discharge an individual, a disqualification will be imposed only if the individual has engaged in misconduct, as that term is defined by law, in connection with the employment. But for the DIA finding, the employer in this matter would have retained the claimant in her employment. The incident in question occurred on October 24, 2007, and the claimant remained as an employee until February 14, 2008, when she was discharged upon the DIA decision of dependent adult abuse. The administrative law judge concludes that the employer’s independent investigation did not provide a basis for discharging the claimant.

As the administrative law judge is not aware of any provision of law that makes the determinations of DIA binding on an unemployment insurance compensation case and the

administrative law judge is not privy to the evidence relied upon by DIA in making its determination of founded abuse, it is unknown whether that evidence would sustain a finding of disqualification from job insurance benefits.

For the reasons cited herein, the administrative law judge concludes that disqualifying misconduct has not been established. During the incident in question, the claimant was distracted from her normal procedure of raising the van ramp because the patient was upset and anxious. While trying to calm the patient, the patient unexpectedly released the brakes on the wheelchair, resulting in his injury and subsequent demise. The administrative law judge concludes that the claimant's conduct was in the nature of an isolated instance of poor judgment caused by the extenuating circumstances. Her conduct was not intentional disqualifying misconduct or negligence of such a recurrence so as to manifest equal culpability.

The administrative law judge concludes that disqualifying misconduct has not been established. The claimant did not intentionally and deliberately act in a manner that she knew to be contrary to the employer's interests or standards. The fact that the employer is prohibited from employing the claimant does not establish disqualifying misconduct. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated March 11, 2008, reference 01, is hereby reversed. The claimant was discharged, but misconduct has not been established. Benefits are allowed, provided that she satisfies all other conditions of eligibility.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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