

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KRISTINA L PHENGSIAROUN
Claimant

APPEAL NO: 10A-UI-13086-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**GOOD SAMARITAN SOCIETY
HOME HEALTH**
Employer

OC: 07/25/10
Claimant: Appellant (1)

Section 96.5-2-a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's September 16, 2010 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated in the hearing. Cheryl Williams, a human resource associate, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in March 1996. She worked as a full-time certified nursing assistant. The claimant understood that some residents needed a one-person assist and some required a two-person assist when a Hoyer was used. When using a Hoyer, the employer enforces safety guidelines for the protection of the residents and employees.

The employer suspended the claimant July 19 through 27, for inconsiderate treatment of a resident. The employer suspended the claimant after she put her hand in ice water and then put her ice-cold hand a resident's neck to wake up the resident during a meal.

On July 29 the claimant was working when a resident, who was using the bathroom wanted to get off the toilet. The claimant knew from experience two people were needed to help transport the resident from the bathroom to her wheelchair. The claimant turned on a call light for assistance. No one came to help the claimant with the resident for about ten minutes. After the resident pleaded and cried to get off the toilet, the claimant decided she could safely move the resident from the bathroom to her bed or wheelchair with the use of a Hoyer. For this resident, the employer required two people when using the Hoyer. The claimant got the resident off the toilet and onto the Hoyer by herself. The claimant started pushing the resident who was on the

Hoyer when two nurses came into the room. The employees who came in the room then helped the claimant transfer the resident to a wheelchair.

The claimant understood she violated the employer's policy when she did not wait for someone to help her move the resident. The claimant concluded it was more important for her to help the resident who was in pain and pleading to get off the toilet than wait for another employee to help her. The employer discharged the claimant on July 29, 2010, for violating the employer's safety policy.

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).

When the claimant was suspended from July 19 through 27 she knew or should have known her job was in jeopardy for violating the employer's policy. On July 29, the claimant knew and understood the employer required two people to transfer a resident. Under the facts of this case, the claimant was in a Catch-22 situation. She put the call light on for assistance. She waited several minutes for someone to help her transfer the resident. While waiting for assistance, the resident pleaded with the claimant to take her off the toilet because she was in pain. When no one came to help the claimant, she decided to help the resident by violating the employer's safety policy.

Even though neither the claimant nor resident were hurt on July 29, the employer's safety policy was implemented for the safety of both residents and employees. On July 29, the claimant made the decision to violate the employer's safety policy. For unemployment insurance purposes, the claimant committed work-connected misconduct when she did not wait for someone to help her with the resident. Therefore, as of July 25, 2010, the claimant is not qualified to receive benefits.

DECISION:

The representative's September 16, 2010 determination (reference 01) is affirmed. The employer discharged the claimant for work-connected misconduct when the claimant intentionally made the decision to violate the employer's safety policy. The claimant is

disqualified from receiving unemployment insurance benefits as of July 25, 2010. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css