

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SOJI I OLUTUNDE**

Claimant

**APPEAL NO: 14A-UI-03375-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SYSTEMS UNLIMITED INC**

Employer

**OC: 03/02/14**

**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's March 20, 2014 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated at the April 21 hearing with his attorney, Davis Foster. Jenny O'Brien, a human resource specialist, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

**ISSUE:**

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

**FINDINGS OF FACT:**

The claimant started working for the employer in July 2003. The claimant worked as a full-time direct care professional caregiver for adults with disabilities. Prior to January 21, 2014, the claimant's job was not in jeopardy.

On January 21 two employees reported an incident involving the claimant and a client. A.R. and J.W. reported seeing a client washing a water pitcher at a sink. They reported that the claimant came up suddenly to this client and struck him in the groin and said, "What are you doing?" The claimant then took the water pitcher from the client and guided him to a couch. No one looked at client's groin or hip until one or two hours after the reported incident. There was no physical indication the client had been hit when someone looked at his hip or groin area. After the employer received the reported incident, the employer reported the incident to the Department of Human Resource and the employer investigated the incident also.

When the employer talked to the claimant, he reported that he came up to the client and cupped or clapped his hands to get the resident's attention because he thought the client was going to drink soapy water. The claimant did not want the client to drink soapy water. The claimant denied he struck or hit the client.

The employer suspended the claimant on January 21. On February 18, the employer discharged the claimant for an unacceptable interaction with a client.

**REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him 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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. Iowa Admin. Code r. 871-24.32(1)(a).

The employer's reliance on information from employees who did not testify at the hearing cannot be given as much weight as the claimant's testimony. The claimant's testimony that he did not strike a client is supported by the lack of a mark on the client's thigh. The fact the claimant's job was not in jeopardy and the claimant had not been involved in any previous similar incidents also supports the claimant's testimony. Based on the claimant's testimony that he concluded the client was about to drink soapy water and clapped his hands to prevent this from happening is credible. The evidence does not establish that the claimant committed work-connected misconduct. As of March 2, 2014, the claimant is qualified to receive benefits.

**DECISION:**

The representative's March 20, 2014 determination (reference 01) is reversed. The employer discharged the claimant for justifiable reasons, but the evidence does not establish that the claimant committed work-connected misconduct. As of March 2, 2014, the claimant is qualified to receive benefits, provided he 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

dlw/css