

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JACKIE L PERRY**  
Claimant

**APPEAL NO. 12A-EUCU-00235-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**COVENANT CARE MIDWEST INC**  
Employer

**OC: 02-01-09**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the September 27, 2012, reference 05, decision that denied benefits. After due notice was issued, a hearing was held on November 9, 2012. The claimant did participate. The employer did participate through Miriam Wall, Administrator, and Beverly Goodsman, Director of Housekeeping. Employer's Exhibit One was entered and received into the record.

**ISSUE:**

Was the claimant discharged due to job connected misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a laundry aide and housekeeper part time beginning April 9, 2012 through September 6, 2012 when she was discharged. The claimant was discharged for physically putting her hands on her supervisor and forcing her supervisor to sit down in a chair. Ms. Goodsman told the claimant to let go of her arm and not to touch her. The claimant left a red mark on Ms. Goodsman's arm where she held her. The claimant had been given the employer's handbook that put her on notice that the employer had a zero tolerance policy for any type of workplace violence. Ms. Goodsman had spoken to the claimant prior to this incident and told her again that she was not to work off the clock. An employee may not volunteer to work without pay as that could subject the employer to penalties from the Department of Labor for violations of the Fair Labor Standards Act. At hearing the claimant admitted that she "put her fingers" on Ms. Goodsman's arm.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). Ms. Goodsman was instructing the claimant that she was not to work off the clock. It is reasonable for an employer to instruct employees not to work when they are not in pay status. The claimant did put her hand on Ms. Goodsman and physically force her to sit down. The claimant had no right to touch Ms. Goodsman in any way. The claimant's actions amount to substantial misconduct sufficient to disqualify her from receipt of unemployment insurance benefits. Benefits are denied.

**DECISION:**

The September 27, 2012 (reference 05) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/pjs