

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBRA S SMITH
Claimant

APPEAL NO: 12A-UI-10485-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

BETHANY LUTHERAN HOME INC
Employer

**OC: 08/15/12
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated August 29, 2012, reference 01, that held she was discharged for misconduct on August 7, 2012, and benefits are denied. A telephone hearing was held on September 26, 2012. The claimant participated. Cindy Schechinger, HR Coordinator, and Marci Trescott, Housekeeping/Laundry Supervisor, participated for the employer. Employer Exhibits 1 and 2 was received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on March 24, 2000, and last worked for the employer as a full-time housekeeper/laundry employee on August 7, 2012. The employer gave claimant some verbal warnings on June 20, and August 12, 2008 about not getting her work done and failing to get along with a co-worker. She was issued a written warning on August 13 for not getting her work done. Claimant was issued a three-day suspension on July 19, 2010 for not getting her work done.

The employer issued claimant a written discipline and three-day suspension from May 30 through June 6, 2012 for failing to perform her job. Claimant denied the statement of a co-worker that she failed to do her job.

The employer discharged claimant on August 7, 2012 for disregarding a work instruction that led to a clogged drain and failing to clean-up after being asked to do so. Blue covered pillows are not to be put in the industrial washer for cleaning. Claimant dumped two bags of "isolation" laundry in the washer and noticed some blue covered pillows. She chose not to ask her supervisor about cleaning those items. The pillows clogged the drain causing a mess. Claimant disregarded her supervisor instruction to help with clean-up by walking away.

REASONING AND CONCLUSIONS OF LAW:

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.

The administrative law judge concludes the employer has established that the claimant was discharged for misconduct in connection with employment on August 7, 2012, for a repeated disregard of work instructions.

The claimant knew the employer policy due to a prior warning and suspension, and her repeated violation for the same type of offense constitutes job disqualifying misconduct. The employer offered evidence of a pattern of discipline where claimant disregarded work instructions that adds credibility to the recent incident as described by the employer.

DECISION:

The department decision dated August 29, 2012, reference 01, is affirmed. The claimant was discharged for misconduct on August 7, 2012. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css