

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DONNA M MILLER**  
Claimant

**APPEAL NO. 08A-UI-11134-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**NEW HOPE VILLAGE INC**  
Employer

**OC: 04/27/08 R: 02  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated November 20, 2008, reference 05, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on December 15, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Leanne Moskowitz participated in the hearing on behalf of the employer. Exhibits One through Seven were admitted into evidence at the hearing.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full time for the employer as a client support staff member from June 12, 2008, to October 13, 2008. Her job involved providing supportive services to developmentally disabled adults. Her supervisor was Deb Binns. On September 19, 2008, Binns informally counseled the claimant for not changing a client's incontinence undergarment during the 1:00 a.m. round and not being attentive to her duties.

The claimant was working an overnight shift from October 4 at 11:00 p.m. to October 5 at 7:00 a.m. One of the clients, a man in his 40s with mental retardation, was having a problem sleeping and was getting out of his bed.

The claimant and another client support staff member tried to get him to back into bed. The claimant and the coworker told the client to get back to bed. There were times when the client sat down on the floor and had to be helped to his feet. The claimant believed the client needed to get his sleep and she was firm in talking to him to have him get back to bed. On one occasion, the client had everything in bed except his legs and the claimant helped him get into bed by swinging his leg on the bed. She did not yell at the client or pick him up and put him in bed. There were times when she stood with her hands on her hips in front of the door, but she was not trying to scare the client or threaten him.

Later the coworker working with the claimant reported to management that the claimant had picked the client up and plopped him into bed two times and mistreated the client. She said the claimant had yelled at the client and treated him like a dog in giving him commands.

After investigating what happened, the employer discharged the claimant on October 13, 2008, for mistreating the client on the morning of October 5.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim.

#### **REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code section 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

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 substantial and 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).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. No willful and substantial misconduct has been proven in this case. The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant testified credibly and denied the allegations that she had plopped the client on the bed, yelled at the client, or mistreated him. The employer did not present any witnesses with firsthand knowledge of what occurred on October 4. The claimant's testimony is entitled to greater weight.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim. If the employer becomes a base period employer in a future benefit year, its account may be chargeable for benefits paid to the claimant based on this separation from employment.

**DECISION:**

The unemployment insurance decision dated November 20, 2008, reference 05, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs