

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**THERESA M JENSEN**  
Claimant

**APPEAL NO. 12A-UI-08086-VS**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**OC: 06/03/12**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a decision of a representative dated June 26, 2012, reference 01, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on October 30, 2012, in Fort Dodge, Iowa. The claimant participated personally. Also present was her son, Trevor Jensen. The employer participated by Katie Grandgeorge, business office manager; Sonya Kelley, social worker; and Dian Rollins, administrator. The employer was represented by Alyce Smolsky. The record consists of the testimony of Katie Grandgeorge; the testimony of Sonya Kelley; the testimony of Theresa Jensen; Claimant's Exhibits A and B; and Employer's Exhibits 1-6.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer operates the Stratford Nursing & Rehabilitation Center, which provides long term nursing care. The claimant was hired on February 27, 2010, as a full time housekeeper. The claimant's last day of work was May 24, 2012. She was terminated on May 24, 2012.

The incident that led to the claimant's termination occurred on May 19, 2012. The claimant supervised the housekeeping staff and on occasion served as the weekend manager for the facility. One area in the facility was known as "Memory Lane" and it served individuals with Alzheimer's disease. The claimant noticed that the rooms in Memory Lane were not being cleaned properly. She was not certain which employee had been cleaning the rooms because Trudy, who normally did the cleaning, had been on light duty and was not assigned to Memory Lane.

The claimant was not certain how to approach the staff about the problems in Memory Lane. Trudy and another employee named Dutch, who worked in the laundry, openly disliked the claimant. The source of that animosity was likely that the claimant had been hired to replace

Trudy after Trudy was demoted. Just prior to the incident that led to her termination, the claimant had seen Trudy in the hall and Trudy had given her a "dirty" look. The claimant was serving as weekend manager.

The claimant saw Trudy and two other housekeepers in the break room and decided that since all three of them were together, that a perfect opportunity existed to talk with them about the conditions in Memory Lane. Trudy somehow concluded that the remarks were being directed at her personally. She got angry and said she quit. She left the facility with her daughter.

The employer concluded that the claimant had been discussing Trudy's job performance in front of other employees. She had been previously given a final written warning about not discussing confidential matters with staff. This warning was given on April 10, 2012. The claimant was terminated by the former administrator. He is no longer with the facility and did not testify at the hearing.

### **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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The legal definition of misconduct specifically excludes errors of judgment or discretion in isolated instances. The employer has the burden of proof to show misconduct.

The claimant is eligible for unemployment insurance benefits. There is insufficient evidence in this record to show that the claimant was discharged for disqualifying misconduct. The claimant was terminated for doing her job, which was to supervise the housekeeping staff. She had a legitimate concern about the condition of some rooms in the Memory Lane. She decided to talk to three of the housekeepers about the problem since they were together in the break room. One of the employees got upset because she thought the criticism was directed solely at her, which was obviously not the case. The claimant credibly testified that she knew Trudy was not responsible since she had been on light duty and had not been cleaning Memory Lane.

The administrative law judge is somewhat at a loss to understand why exactly the claimant was terminated since it appears she was addressing a group of employees about their collective job duties. The administrator who made the decision to terminate the claimant was no longer at the facility and did not testify at the hearing. He is the individual who made the decision to terminate the claimant. At best the claimant may have used poor judgment by talking to employees collectively instead of individually. The critical piece of evidence is that she was talking to them about their job duties and these were duties that all of them shared. Confidential information was not being shared with anyone.

Since there is insufficient evidence that the claimant was discharged for misconduct, benefits are allowed if the claimant is otherwise eligible.

**DECISION:**

The decision of the representative dated June 26, 2012, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs