

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JANET M KNIGHT
Claimant

APPEAL NO. 13A-UI-06536-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HARVEST MANAGEMENT SUB TRS CORP
Employer

OC: 09/16/12
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 24, 2013, reference 03, decision that denied benefits. After due notice was issued, a hearing was held on July 1, 2013. The claimant did participate. The employer did participate through (representative) Pam Thompson, Manager and Teresa Dyers, Head Housekeeper. 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 housekeeper/server full time beginning January 3, 2013 through May 8, 2013 when she was discharged.

The claimant worked in an independent living facility that is not a medical facility. The employer characterizes it as gracious living for the residents. The claimant would clean resident's apartments and work as a food server in the dining room during meal periods. On May 7 a resident came to Ms. Thompson to complain about how the claimant treated her while she was cleaning the resident's apartment. The resident complained that the claimant would tell her to be quiet while watching television and on at least one occasion pushed the resident out of the way so she could see the television. When the resident reported to Ms. Thompson, Ms. Thompson investigated and interviewed the claimant. The claimant initially did not respond to Ms. Thompson's questions, and then admitted that she had told the resident to be quiet and that she had moved her out of the way. The claimant had received a copy of the employer's handbook or policy manual that put her on notice that touching residents was forbidden. The resident asked that the claimant not be assigned to clean her apartment any longer. The resident who made the complaint does not have dementia.

Another resident complained to Ms. Thompson that the claimant embarrassed her in the dining hall by poking her in the arm and asking her "why did you say I'm scatterbrained." This resident

complained to dining room manager Ms. Dyer who reported it to Ms. Thompson. The claimant made the comment in front a table of residents. The claimant later apologized to the resident.

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 § 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). The employer relied upon complaints from a reasonable residents in making the decision to discharge. The administrative law judge is persuaded that the claimant was, at the very least, telling a resident in her own apartment to be quiet, so that the claimant could hear the television. She had no right to hear the television while she was working. Despite the claimant's claims to the contrary, the administrative law judge does not believe that the resident had dementia. The administrative law judge also believes that the claimant did move the resident out of the way so she could see the television. The resident had the right to expect the claimant not to do that to her in her own home.

Yet another resident complained about the claimant poking her in the arm while she accused the resident of calling her a scatterbrain. While the claimant may have apologized later, her conduct was unacceptable.

The administrative law judge is persuaded that the claimant did tell a resident to be quiet and that she did move the resident so she could see the television. Such conduct is sufficient to disqualify the claimant from receipt of unemployment insurance benefits. Benefits are denied.

DECISION:

The May 24, 2013 (reference 03) 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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css