IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

ASHLEE M FUEGEN Claimant **GOOD SAMARITAN SOCIETY INC** Employer	**APPEAL 14A-UI-09385-H2T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 08/17/14** **Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 5, 2014, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 30, 2014. Claimant participated. Employer participated through Jennifer Green, Manager and Joanna Miller, Human Resources Coordinator. Employer's Exhibit One was entered and received into the record.

ISSUE:

Was the claimant discharged due to job connected misconduct or did she voluntarily quit her employment without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed on an as needed basis, but essentially worked a full-time set schedule as a home care worker beginning on December 1, 2013 through August 15, 2014 when she was discharged.

The claimant worked eight hours per day roughly four or five days per week caring for 'client 1." Client 1 was an alcoholic who became drunk on an almost daily basis and would treat the claimant rudely and in a disparaging manner. The other aides who worked with client 1 also complained to the employer about her treatment and behavior toward them. The claimant complained to management about Client 1 and how she treated her. The employer had agreed to move claimant from her 2nd shift time schedule to 3rd shift so that client 1 would be asleep during most of the claimant's work shift.

On August 14 client 1 and her ex-daughter-in-law were in the house. Both were heavily consuming alcohol and by the claimant's estimation both were intoxicated. Client 1's daughter-in-law told client 1 not to wash up the dishes that were dirty as they "had a slave to do that." She made the comment referring to the claimant. The claimant had reached the end of her rope and texted the employer that she would not be returning to work for client 1 the next day as she had endured enough of her abuse and that of her intoxicated family members. The

only person to testify at the hearing about what actually occurred in the house with client 1 was the claimant. The employer admits that the claimant and other workers had complained about how client 1 acted when she was consuming alcohol.

When the claimant did not report to her shift for client 1 the next day, she was discharged for absenteeism. The claimant had properly reported her absence because her text message on August 14 was clear that she would not be returning to work for client 1. The claimant had not received a final warning about her attendance.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.,* 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What

constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

No work environment is free from all stressors or problems. However, the claimant endured repeatedly poor treatment from client 1. No indication was given by the employer that they ever attempted to have client 1 treat the claimant in a more reasonable manner. Even prior to the last incident, the employer had agreed to move the claimant to the third shift because client 1 was treating her so badly. The administrative law judge is persuaded that the claimant gave the employer clear notice that she would no longer work with a client who called her a 'slave.' The claimant was not required to endure such repeated on-going poor treatment.

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. The claimant properly reported that she would be absent on August 15. Under these circumstances the claimant was justified in not wanting to return to work for a client who called her a slave. She had no final warning about her attendance. The employer has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. The claimant was not required to endure any behavior that client 1 wanted to thrust upon her. No disqualifying misconduct has been established. Benefits are allowed.

DECISION:

The September 5, 2014 (reference 01) decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

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Teresa K. Hillary
Administrative Law Judge

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Decision Dated and Mailed

tkh/pjs