

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

PAULA K RYAN  
2116 WALLACE ST  
MUSCATINE IA 52761-5941

RESCARE INC  
c/o MARIE SHEFLEBINE  
HUMAN RESOURCES ADM  
301 W BURLINGTON ST  
FAIRFIELD IA 52556

Appeal Number: 06A-UI-07695-DT  
OC: 07/09/06 R: 04  
Claimant: Appellant (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Paula K. Ryan (claimant) appealed a representative's July 27, 2006 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with Rescare, Inc. (employer) After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 16, 2006. The claimant participated in the hearing. Cammie Cooper appeared on the employer's behalf. Based on the evidence, the arguments of the parties and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

#### FINDINGS OF FACT:

The claimant started working for the employer on November 4, 2004. As of March 2006, she worked full-time as a community support staff worker in the employer's Muscatine, Iowa, branch of its service providing assistance to persons who are mentally challenged. As of March 2006, the claimant's responsibilities were to provide direct support to two "waiver" residents living in an apartment. She typically worked a schedule from 3:00 p.m. to 11:00 p.m. five days per week, working every other weekend. Her last day of work was July 10, 2006. The employer discharged her on that date. The reason asserted for the discharge was not going after one of the residents who left the apartment on July 7, 2006.

Resident "C" is in her early 20's and had a history of running off from the apartment. She is not supposed to be left alone. On one earlier occasion, the claimant had chased after "C" for several blocks and was not catching up with her. She called the on-call staff from her cell phone, who told her someone else would come to track down "C" and that she should go back to the other resident, "D," who is also in her early 20's and is also not supposed to be left alone.

On July 7 at approximately 6:00 p.m., the claimant and "C" had an argument about "C" having pop; "C" had a pop restriction as part of her treatment, and she was angry because the claimant was refusing to allow her to have more pop. As a result, she went out the door and ran off. The claimant followed her out enough to see which direction she was going and then called the on-call staff. She reported that "C" had run off again, indicated the direction "C" was going, and stated that she was going to stay with "D" so that someone else needed to come and track down "C."

The employer asserted that the claimant talked to the on-call service coordinator and refused to chase down "C" when directed. The claimant denied that she was ever instructed to chase down "C" on July 7. The employer asserted that the service plan for "C" specified that if she ran off the staff was to follow her, and that insofar as "D's" service plan may have also specified that "D" was not to be left alone, urged that the claimant could have brought "D" along as she went after "C" and taken "D" to another nearby apartment where there was other supervision while she tracked down "C."

#### REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, 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 is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The focus of the definition of misconduct is on acts or omissions by a claimant that "rise to the level of being deliberate, intentional or culpable." Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
  - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
  - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
  - a. Manifest equal culpability, wrongful intent or evil design; or
  - b. Show an intentional and substantial disregard of:

1. The employer's interest, or
2. The employee's duties and obligations to the employer.

Henry, supra. The reason cited by the employer for discharging the claimant is that she failed to go after the resident that ran off, and directly refused to do so. However, the claimant denied that she had directly refused to go after the resident, that she thought that she was doing what she was supposed to do by calling in her report and staying with the other resident, consistent with what she had been instructed to after the first resident had run off before. No first-hand witness was available at the hearing to provide testimony to the contrary under oath and subject to cross-examination. Under the circumstances, the administrative law judge finds the claimant's first-hand information more credible. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's July 27, 2006 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

ld/cs