

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LOGAN MOORE
Claimant

APPEAL NO. 11A-UI-08613-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

S T L CARE COMPANY
Employer

**OC: 05/22/11
Claimant: Respondent (1)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

S T L Care Company (employer) appealed an unemployment insurance decision dated June 23, 2011, reference 01, which held that Logan Moore (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 1, 2011. The claimant participated in the hearing. The employer participated through Gina Olexa, program director, and Carla Matt, human resources director. Employer's Exhibits One through Six were admitted into evidence. 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:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time direct support professional from November 9, 2010 through May 26, 2011, when he was discharged for violation of the employer's safety policy regarding lifting and transferring. He signed the lifting disciplinary procedure on April 6, 2011, which provides that the employer has zero tolerance for employees failing to properly transfer individuals. There was a tornado warning on the afternoon of May 22, 2011 and the nurse in charge told the staff to start putting the residents in their wheelchairs. Shortly thereafter, the sirens went off and the residents were pushed to the hallway. The nurse went to check each room to ensure the residents were out of their rooms and then to shut the doors afterwards.

There was one resident who was not yet out in the hallway and the claimant was helping him dress. This particular resident required the use of a Uno or Golvo lift, but the claimant could not find one of those lifts and was in a hurry to get the resident into the hallway. The claimant got another staff member to help him use a gait belt to move the resident into his chair and out to the hallway. The nurse was helping another resident but when she returned, she saw the

claimant's resident out in the hallway and asked the claimant about it. He admitted he had not used the Uno or Golvo lift. The employer suspended him on approximately May 25, 2011 and subsequently discharged him.

The claimant had previously received a verbal warning on March 29, 2011 for improperly using a Uno and Hygiene Sling on March 26, 2011. He placed the resident's arms on the inside of the sling so that when she was lifted, she fell out of the sling and hit her back on the floor. The claimant was re-educated on the proper use of the hygiene sling in that an individual's arms must always be placed on the outside of the sling.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. 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.

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.

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).

The claimant was discharged on May 26, 2011 for violating the employer's safety policy regarding resident lifting and transfers. He did transfer a resident contrary to that resident's lift and transfer checklist, but he was acting based on an emergency situation. There was a tornado warning and the sirens were going off and the claimant needed to get the resident out into the hallway; the claimant could not find the required lift so he got the assistance of a co-worker to quickly move the resident into the hallway. Misconduct must be substantial in nature to support a disqualification from unemployment benefits. *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1982). The focus is on deliberate, intentional, or culpable acts by the employee. *Id.* The employer has not met its burden to establish wrongful intent. Work-connected misconduct as defined by the unemployment insurance law has not been established in this case and benefits are allowed.

DECISION:

The unemployment insurance decision dated June 23, 2011, reference 01, is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw