

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JANE N ZUEHLKE

Claimant

APPEAL NO: 12A-UI-14447-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABCM CORPORATION

Employer

OC: 11/04/12

Claimant: Appellant (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's November 29, 2012 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated in the hearing. Angela Klus, the administrator, Carrie Thomas, the co-director of nursing, Brandi Moorehell, a CNA, and Amy Follon, a CNA, testified on the employer's behalf. Regina Haley and Sadie Ginther were available to testify, but did not. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant is not qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in March 2008. She worked full time in laundry. The claimant understood the employer's policy required all employees to treat residents respectfully, kindly and considerately. The claimant understood that if she or any other employee did not treat a resident respectfully, the employer could discharge the employee.

During her employment, the claimant received a warning on October 19, 2010, for making an inappropriate comment to a resident. After a resident asked the claimant about some sheets, the claimant raised her voice and told the resident the sheets were not theirs, but everyone's. This resident complained about the way the claimant had talked to them. On May 2, 2012, the claimant received a written warning for interacting inappropriately with co-workers.

On October 29, 2012, employees heard the claimant raise her voice to Resident A after he asked her about his missing red shirt. The resident became upset when the claimant did not know anything about his red shirt. The claimant became frustrated with the resident. After the claimant threw down a shirt onto a chair, she walked out of the resident's room.

After the claimant left the room, Moorehell, who had heard the claimant talking to the resident, checked on Resident A. He told her this was not the first time the claimant had raised her voice at him and probably would not be the last. Follon was outside Resident A's door when she heard the claimant raise her voice at him. She checked on Resident A, who was still frustrated with the claimant. Resident A appeared to be teary eyed.

On October 29, as Thomas was walking down a hallway, she heard Resident B ask the claimant about her missing blanket. Resident B tried to explain what blanket was missing. Thomas heard the claimant raise her voice and give the resident short answers. Ultimately, the claimant told the resident that she did not know what blanket the resident wanted and walked away. Thomas reported to the claimant's supervisor that the tone of the claimant's voice and body language had been inappropriate when she interacted with Resident B.

When the employer talked to the claimant on October 30, the claimant denied she had treated these residents inappropriately. The claimant acknowledged she should have left Resident A's room sooner than she did because she was frustrated with him. Based on the reports from several employees about how the claimant interacted with these two residents, the employer discharged her on October 30 for in appropriate interaction with two residents on October 29, 2012.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a.

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The employer's witnesses are credible. The claimant acknowledged she became frustrated with Resident A and should have left his room before she did. The claimant also understood the employer's policy about how employees were to treat residents. Since the claimant knew about and understood the employer's policy, she raised her voice at two residents on October 29, did not interact with them appropriately, and had been previously warned about this kind of behavior, the claimant's conduct on October 29 amounts to work-connected misconduct. As of November 4, 2012, the claimant is not qualified to receive benefits.

DECISION:

The representative's November 29, 2012 determination (reference 01) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of November 4, 2012. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/tll