

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SIMONE SKOWRONEK**  
Claimant

**APPEAL NO. 06A-UI-10781-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CHANCE MR**  
Employer

**OC: 10/01/06 R: 03**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Chance (employer) appealed a representative's November 1, 2006 decision (reference 02) that concluded Simone Skowronek (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 27, 2006. The claimant participated personally. The employer participated by Lizbeth Wilkinson, Administrator; Dorothy Cobb, Program Manager; Russell Barnes, Resident; and Pat Haas, Mental Retardation Worker.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on April 18, 2006 as a full-time direct care worker in a residence that housed three mentally retarded residents. The employer issued the claimant a written warning on August 18, 2006, regarding "bucking authority". The claimant had requested disinfectant to clean a resident's fecal material that was spread over the bathroom floor and other surfaces. The employer told the claimant to clean the area with dishwashing detergent and water. When the claimant showed the employer the employer's rule about using disinfectant, the employer suggested using a toilet wand or toilet bowl cleaner. The employer also listened to the resident's complaints about the claimant even though the residents were not truthful with the employer. The residents told the employer that a police officer asked the residents to move once when they were watching auto races.

On September 6, 2006, a resident telephoned the claimant's supervisor to complain about the claimant. The claimant asked the resident to take care of his dirty dishes according to the house rules before he had a bowl of ice cream. The claimant had also asked him to clean his room. The resident told the supervisor that the claimant would not let him leave his room or have ice cream unless he performed certain tasks. After the resident spoke the claimant explained to the supervisor that she had merely asked the resident to perform tasks according

to the rules of the house. The resident had walked away and the claimant yelled over the sound of the television for the resident to join her on the telephone. The supervisor assumed the claimant was yelling at the resident.

On September 8, 2006, the employer terminated the claimant for yelling at a resident and ordering him to perform tasks rather than asking him to perform the tasks.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 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 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 employer discharged the claimant and has the burden of proof to show misconduct. The employer did not provide sufficient evidence of misconduct at the hearing. Consequently the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

**DECISION:**

The representative's November 1, 2006 decision (reference 02) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs