

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LUCYNDA J RODRIGUEZ
Claimant

APPEAL NO. 09A-UI-17190-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SKYLINE CENTER INC
Employer

OC: 10/04/09
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated November 4, 2009, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on December 22, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. Lisa Hammond participated in the hearing on behalf of the employer with a witness, Jennifer Green.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as a direct care manager, which involved providing care and daily living skills support for disabled clients. She was informed and understood that under the employer's work rules, clients had be treated with respect and dignity. In June 2009, the claimant was warned about telling a resident that her butt was big and she needed to exercise.

On August 31, 2009, a 20-year mentally retarded client had gone outside and was lying on the ground. The claimant tried getting him up by tickling him, which was the instruction provided for this resident to get him to do as he was told. During the course of doing that, the claimant said, "Get back in the house, you little shit." She did not make the statement in a hostile way, but another staff member reported that she had used profanity in speaking to the client.

The claimant was discharged on September 1, 2009, based on her using profanity in speaking with the client.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated November 4, 2009, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css