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

JOAN M CATE
PO BOX 83
TERRIL IA 51364

HOPE HAVEN INC
1800 – 19TH ST
ROCK VALLEY IA 51247

Appeal Number: 05A-UI-06625-DWT
OC: 05/22/05 R: 01
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, 4th 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.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Joan M. Cates (claimant) appealed a representative's June 15, 2005 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Hope Haven, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 25, 2005. The claimant participated in the hearing. Leann Blau, the residential manager, and Branae Robb, the claimant's supervisor since March 2005, 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:

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

FINDINGS OF FACT:

On May 24, 2004, the claimant started working as a full-time associate residential instructor for the employer. In mid-February 2005, the employer talked to the claimant about the way she talked to or treated co-workers. The claimant does not remember any discussion about problems with violating consumers' rights in mid-February 2005. On April 5, 2005, the employer talked to the claimant about the claimant violating a consumer's rights when she was not going to let a consumer, K., go to church on April 3. The claimant reported that K. had not been feeling well and because K. had a temperature, the claimant did believe it was in K.'s best interests not to go to church that day. When the claimant talked to K.'s parents about church, the claimant understood they believed K. should not go to church that day. Another staff member took K. to church because K. did not have a temperature when this staff member checked her temperature. The other staff member checked K.'s temperature after her fever broke. A day later, another consumer, B., along with K., and another consumer were taken to a doctor. While B. was the only person still ill, antibiotics were prescribed for all three because they lived in the same facility.

On May 14, Robb left directions for the claimant to drive a van to Sioux Falls and take consumers to the zoo. The clamant started driving, but a co-worker, Shelly, took over after the claimant had problems with the windy conditions and the high profile van. While Shelly drove, the claimant played a video came with a consumer, C. The claimant did not sleep in the van. Other staff drove other vehicles to Sioux Falls. Everyone who traveled to Sioux Falls met for lunch. During lunch, staff and consumers talked about going to the zoo. It was unusually cold and windy on May 14. The claimant understood that the consumers who rode in her van did not want to go to the zoo. At lunch, the claimant understood other groups decided they would not go to the zoo either, but would instead go to the mall or to a movie in Sioux Falls. Every group, but the claimant's group, went to the zoo. The claimant learned the other groups went to the zoo when a staff member called the claimant because Shelly had B.'s money.

The employer received a report from a consumer, C., that the claimant slept in the van when Shelly drove and that C. had wanted to go to the zoo instead of the mall. The employer concluded that the claimant and Shelly decided to go to the mall even though the consumers had permission and wanted to go to the zoo. Based on information the employer received from other staff and consumers, the employer concluded the claimant was insubordinate when she failed to follow Robb's directions to drive the van and take the consumers to the zoo. The clamant also violated the consumers' rights when she decided to take the consumers to the mall even though the employer understood the consumers wanted to go to the zoo.

On May 24, 2005, a new employee, Trish, reported that the claimant made the decision to buy some groceries for the consumers even though the consumers had not decided what they wanted to eat. Trish did not ask the claimant why she had groceries purchased when the consumers had not yet planned a menu. On May 24, the consumers would not make out a menu. The claimant decided that since there was no meat for the consumers to eat the following day, she had Shelly buy food the consumers usually wanted to eat, hamburger and chicken. The claimant realized the consumers had not made out a menu and she hoped the consumers would make a decision about their menu the next day. Trish also reported that the claimant told her she had slept in the van on the way to the zoo on May 14.

On May 26, 2005, the employer talked to the clamant for the first time about the zoo incident. The claimant denied she slept in the van on the way to zoo. The claimant also informed the

employer that the consumers that were in her van decided to go to the mall. The employer informed the claimant that B. had been her responsibility on May 14 and she left B. in the care of another staff member. The employer determined the clamant was not a team player. The employer discharged the clamant on May 26, 2005, because the claimant had been insubordinate, she was not a team player and she violated the consumers' right.

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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

The claimant's testimony as to what her consumers wanted to do on May 14, go to the zoo or the mall, is credible and must be given more weight than the employer's reliance on hearsay information. While the consumers may not be able to testify, another staff member who was in Sioux Falls and ate lunch with the claimant and her group could have testified, but did not. The evidence does not establish that the claimant violated any consumers' rights on May 14 when she took them to the mall instead of the zoo. The evidence also does not establish that the claimant slept in the van when another staff person drove to Sioux Falls. If the claimant did not feel well or was extremely anxious about driving in the wind, she made a reasonable and responsible decision to let another person drive the rest of the way to Sioux Falls.

On May 24, 2005, the consumers refused to work on their menu. Trish and Shelly took longer than usual to pick up medication. The claimant had been told to get groceries when there was double staffing. The claimant understood it was the consumers' responsibility to decide what they wanted to eat and then groceries would be purchased based on the menu they decided. On May 24, time to get some groceries was running out and the claimant made the decision to pick up some meat because she did not see any for the consumers to cook or eat the following day. By deciding to purchase some meat, the claimant technically decided that the consumers would eat either a hamburger or chicken dish the following day even though the claimant did

not make out a menu. It appears that May 24 was a frustrating day and the claimant may have used poor judgment when she told staff to pick up some hamburger and chicken for the consumers. The claimant, however, had the consumers' best interests in mind when she made this decision. The evidence does not establish that the claimant intentionally violated the consumers' rights on May 24.

The employer had been talking to the claimant about various problems since mid-February 2005. After Robb took over as the claimant's supervisor, the employer may have examined the claimant's work performance more closely. Since Trish directed Shelly to the wrong pharmacy when picking up some medication on May 24, it is not known why she immediately contacted Robb about buying hamburger and chicken instead of asking the claimant or Shelly about this purchase. Based on the employer's investigation, the employer established business reasons for discharging the claimant. While the claimant may have used poor judgment in some instances, she did not intentionally or substantially violate the standard of behavior the employer had a right to expect from her. The claimant did not commit work-connected misconduct. Therefore, as of May 22, 2005, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's June 15, 2005 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of May 22, 2005, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kjw