

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STACY L SNYDER
Claimant

KRYSILIS INC
Employer

APPEAL NO: 09A-UI-10705-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/20/09
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated July 20, 2009, reference 01, that held she was discharged for misconduct on June 8, 2009, and benefits are denied. A telephone hearing was held on August 12, 2009. The claimant, and her supervisor, Verna Derksen, participated. Donna Kluff, HR Coordinator, and Laura Redemske, Residential Coordinator, participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant worked for the employer as a full-time direct support staff person from September 15, 2008, and last worked for the employer on June 8, 2009. The claimant supervised mentally retarded adult residents in a group home setting for the employer.

On June 8, 2009, the claimant escorted five residents (including DW) by walking them about three to four blocks to a community building to go swimming. After about an hour of swimming, the claimant advised the residents it was time to return to the group home. Outside the building, claimant encountered another support staff person who offered to give her and several residents a ride back to the home in her van. When the claimant entered the home, she realized that resident DW had not returned with her, and she immediately called the office to check on her whereabouts. Approximately twenty minutes elapsed before DW walked in to the group home on her own.

After an internal investigation, the employer discharged the claimant on June 10, for neglect of the resident in failing to supervise and provide care in violation of policy.

REASONING AND CONCLUSIONS OF LAW:

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.

The administrative law judge concludes the employer has established that the claimant was discharged for misconduct in connection with employment on June 10, 2009.

The claimant was in charge of a few residents and it is difficult to understand how she left resident DW behind at the pool facility when leaving it and entering the employer van with the others. The mentally retarded resident was left unattended at pool setting that may be considered a hazardous location, and her whereabouts from it to her arrival at the group home are unknown for a twenty minute period. The claimant's act of neglect is so serious as to constitute job disqualifying misconduct.

DECISION:

The department decision dated July 20, 2009, reference 01, is affirmed. The claimant was discharged for misconduct on June 10, 2009. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs