

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

Claimant

**APPEAL 19A-UI-04465-JC**

Employer

**ADMINISTRATIVE LAW JUDGE  
PUBLIC DECISION**

**OC: 04/28/19  
Claimant: Appellant (2)**

Iowa Code § 235B.6(2)(d)(4) - Dependent Adult Abuse – access to confidential information  
Iowa Code § 235B.8 – Dependent Adult Abuse – redissemination of confidential information  
Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Admin. Code r. 871-24.32(9) – Disciplinary Suspension

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the May 22, 2019 (reference 01) unemployment insurance decision that denied benefits based upon the claimant's disciplinary suspension with this employment.

After proper notice to all parties, an in-person hearing was conducted on June 28, 2019. The claimant participated and was represented by an attorney. The employer participated through a human resources representative. Claimant Exhibit A was admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Shall the hearing record and decision be publicly disclosed?

Was the claimant suspended for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits?

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a Certified Nursing Assistant (CNA)/Medication Aide. This employer provides assistance and long term care services to residents, including those with dementia. The claimant was employed from 2013 until April 19, 2019.

The claimant's job duties involved providing direct care and supervision for residents. The employer has extensive policies outlining care for its residents. These policies also outline the definitions and consequences of abuse or neglect of residents. The claimant received a copy of the employer's policies during hire and has participated in annual training with the employer.

The undisputed evidence is the claimant self-reported to the employer an incident that occurred between her and a resident on April 19, 2019. While helping the resident, who was combative and had dementia, the resident bit the claimant on the shoulder. When the claimant pulled back her arm from being bitten, she made contact with the resident.

The claimant was suspended pending investigation. The employer conducted an internal investigation and concluded the claimant's "knee-jerk" response to being bitten unexpectedly was not purposeful or willful or intentional. The employer completed its investigation and suspended the claimant on April 20, 2019. It is waiting for an additional investigation to be completed before the decision of whether the claimant can return to work or will be discharged.

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

**The first issue to be addressed in this case is the effect of the confidentiality requirements of Iowa Code § 235B.6(2)(d)(4) and Iowa Code § 235B.8.**

Iowa Code § 235B.8 prohibits the redissemination of dependent adult abuse information. Iowa Code § 235B.8 must be followed despite conflicting provisions of the Iowa Open Records Act (Iowa Code chapter 22), the Iowa Administrative Procedure Act (APA) (Iowa Code chapter 17A), and Iowa Employment Security Law (Iowa Code chapter 96). Iowa Code § 22.2(1) provides: "Every person shall have the right to examine and copy a public record and to publish or otherwise disseminate a public record or the information contained in a public record."

The appeal documents, exhibits, decision, and audio recording in an unemployment insurance case would meet the definition of "public record" under Iowa Code § 22.1-3. Iowa Code § 17A.12(7) provides that contested case hearings "shall be open to the public." Under Iowa Code § 96.6(3), unemployment insurance appeals hearings are to be conducted pursuant to the provisions of chapter 17A. The unemployment insurance rules provide that copies of all presiding officer decisions shall be kept on file for public inspection at the administrative office of the department of workforce development. Iowa Admin. Code r. 871-26.17(3).

In this case, it would defeat the purpose of Iowa Code § 235B.8 of restricting redissemination to permit the confidential information to be disclosed to the general public. Therefore, the public decision in this case is issued without identifying information. A decision with identifying information will be issued to the parties; but that decision, the audio record, and any documents in the administrative file shall be sealed and not publicly disclosed.

For the reasons that follow, the administrative law judge concludes the claimant was not suspended from employment for misconduct.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Iowa Admin. Code r. 871-24.32(9) provides:

(9) Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification. This rule is intended to implement Iowa Code section 96.5 and Supreme Court of Iowa decision, *Sheryl A. Cosper vs. Iowa Department of Job Service and Blue Cross of Iowa*.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their

motive, candor, bias and prejudice. *Id.* After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the Administrative Law Judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant was suspended for work-connected misconduct as defined by the unemployment insurance law.

Claimant's job duties included following the necessary and required policies and guidelines that were in place for each resident's health and safety purposes. These include not engaging in abuse or neglectful conduct which is defined within employer policies. Claimant was aware of these policies. An employer has a right to expect that an employee will not jeopardize the safety of others, especially where the claimant's job duties require them to keep the clients they are supervising safe.

There is not substantial evidence in the record to support the conclusion that claimant deliberately violated these rightful expectations when she pulled her arm away after being bitten by a resident and inadvertently made contact with the resident. While the employer may have been justified in suspending the claimant while the incident is under investigation, work-connected misconduct as defined by the unemployment insurance law has not been established. Benefits are allowed.

**DECISION:**

The May 22, 2019 (reference 01) decision is reversed. The claimant was not suspended for disqualifying misconduct. Benefits are allowed, provided she is otherwise eligible.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

jlb/scn