

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBORAH J MOYLE
Claimant

APPEAL NO: 14A-UI-01699-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GENESIS DEVELOPMENT
Employer

OC: 01/19/14
Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's February 6, 2014 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated at the March 6 hearing. Emily Herron and Cathy Miller, the community living director and the claimant's supervisor, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working full time for the employer in February 2013. She became a team leader the summer of 2013. Miller noticed the claimant had some issues as a team leader and gave her a performance improvement plan in December 2013. Miller told the claimant they would meet in 60 days to decide if the claimant had made the necessary improvements and if necessary, what the next steps would be.

The claimant received the performance improvement plan in part because of her communication or lack of communication with parents, parents' complaints that staff felt threatened by the claimant, the claimant's failure to make sure staff followed through with appropriate programs, the claimant's failure to timely report for appointments and meetings and that she needed to put ads in the paper for new employees. Miller concluded that the work environment at the claimant's facility was tense because staff felt the claimant would discharge them if they made a mistake.

As a result of problems with some parents, Miller sent the claimant an email telling her that her staff was no longer allowed to talk to parents. Parents became upset and blamed the claimant for this directive. Parents then reported that staff would not talk to them as they had before because they allegedly feared the claimant would discharge them.

In December 2013 a new resident came to live at the claimant's facility. This person had severe seizures so staff needed to be medically certified to give this person medication to prevent seizures. The nurse who provided the medical certification told the claimant that until staff was medically certified, they could not provide this person medication. They could only call 911 if this person had a seizure.

The claimant scheduled two new staff members to work by themselves the weekend of January 18-19. The claimant told both employees that if this person had a seizure they were to call 911 and then the claimant. The employee who worked on January 19 gave the resident the medication and then called the claimant. The claimant completed a med error report because this employee should not have given the resident this medication. This employee had yet received training to become medically certified.

This new employee initially told Miller the claimant told her to give the medication to this resident if needed. Later, the employee reported that the claimant asked her to lie and tell Miller that the claimant had told her she could not give medication to the resident.

On January 20, 2014, the employer discharged the claimant. The employer told the claimant she was discharged for threatening employees. The employer discharged the claimant also for using poor judgment when she scheduled staff members who were not medically certified to administer medication to prevent the resident from having a seizure.

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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant may have used poor judgment when she scheduled a new staff member to work alone, but poor judgment does not rise to the level of work-connected misconduct. The real issue in this matter is what the claimant told the new employee who worked on January 19. The

employer's reliance on hearsay information from this employee, who did not testify at the hearing, cannot be given as much weight as the claimant's testimony. Additionally, the claimant's testimony is supported by the fact the employee who worked on January 18 verified that the claimant was told her to call 911 if the resident had a seizure. It is doubtful the claimant gave employees different directions. Therefore, the evidence does not establish that the claimant told the employee who worked on January 19 to administer any medication to a resident.

The employer established business reasons for discharging the claimant, but the claimant did not commit work-connected misconduct. As of January 19 2014, the claimant is qualified to receive benefits.

DECISION:

The representative's February 6, 2014 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of January 19, 2014, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css