

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARGARET J ZAABEL
Claimant

APPEAL NO. 09A-UI-16281-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 09/13/09
Claimant: Respondent (1)

Section 96.5-2-a – Misconduct

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated October 21, 2009, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on December 3, 2009. Claimant participated. Employer participated by Diane Panzi, administrator; Jaime Thomee, certified nursing assistant; and Kathy Bagwell, director of nursing. The employer was represented by Lynn Corbeil, attorney at law. The record consists of the testimony of the following individuals: Kathy Bagwell; Jaime Thomee; Diane Panzi; Margaret Zaabe; Carolyn Marcalus; and Karen Hermanson. Employer's Exhibits 1-10 were received into evidence.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer in this case is a long term care facility located in Stratford, Iowa. The claimant worked as a registered nurse/charge nurse on the night shift. She had been employed by the facility since February 23, 2004. She was terminated on September 18, 2009.

The incident that led to the claimant's termination was the result of a complaint made by Jaime Thomee, a certified nursing assistant who had worked with the claimant. Ms. Thomee was new to the facility. She started working there on September 4, 2009. Ms. Thomee made a complaint to the director of nursing that the claimant was "very rude" and was demanding and impatient. Ms. Thomee informed Ms. Bagwell that she would not work with the claimant any longer.

Ms. Bagwell and Ms. Panzi, the administrator, decided that since there had been other complaints about the claimant's interaction with the staff that the time had come to terminate the claimant. The notice of termination also indicated that there had been reports that the claimant did not answer call lights and told residents they would have to wait. (Exhibit 5-a) The claimant

had other disciplinary warnings in the past. On May 15, 2009, the claimant had been given a letter of reprimand for giving a resident two milligrams of Ativan instead of one. The doctor's orders had been for one to two milligrams.

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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. In order to justify disqualification, the evidence must establish that the final incident leading to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8). See also *Greene v. EAB*, 426 N.W.2d 659 (Iowa App. 1988). The employer has the burden of proof to show misconduct.

After carefully considering all of the evidence in this case, the administrative law judge concludes that the employer has failed to show that the final incident leading to the decision to discharge was a current act of misconduct. The incident that directly led to the claimant's termination was a complaint from a certified nursing assistant who felt that the claimant was rude, demanding and impatient. The CNA, Ms. Thomee, told the director of nursing that she would not work with the claimant. Ms. Bagwell had gotten some complaints from other staff members about the claimant's demeanor and based on those complaints decided to terminate

the claimant. There is no evidence that this final incident in any way compromised patient care but rather reflected a difficult working relationship between the claimant and some other members of the staff.

The employer certainly had the right to terminate the claimant and complaints from staff might well be a good business reason for that termination. The employer has not sustained its burden of proof to show that the claimant's conduct was a material breach of the duty owed by the claimant to the employer. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated October 21, 2009, reference 01, is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs