

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

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GOOD SAMARITAN SOCIETY INC
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ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-04323-DWT
OC: 03/19/06 R: 04
Claimant: Respondent (1)

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:

Good Samaritan Society, Inc. (employer) appealed a representative's April 10, 2006 decision (reference 01) that concluded Travis L. Zellmer (claimant) was qualified to receive unemployment insurance benefits, and the employer's account may be charged because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 8, 2006. The claimant participated in the hearing. Brenda Timp, the director of nursing, and David Hjortland, the facility administrator, 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:

The claimant started working for the employer as a full-time certified nurse aide on July 24, 2000. Timp was the claimant's supervisor. Prior to March 22, 2006, the claimant's job was not in jeopardy.

On March 22, a CNA, K., reported to the charge nurse that the claimant verbally abused a resident. The claimant and K. were getting a resident up from a rest period and the resident was talking very loudly. K. reported that the claimant told the resident to shut the *#@! up! The incident took place between 2:00 and 4:30 p.m. and no other employee was in the resident's room with the claimant and K. When Timp received this report on March 23, the employer reported the incident to the Department of Inspections and Appeals and also investigated the allegation.

During the Timp's investigation, the employer received reports of two other incidents. One occurred on March 6 when another CNA saw the claimant put his hand over the mouth of a resident and told the resident to shut the *%#@ up! Although the employer and its employees are mandatory reporters, the employee did not immediately report this incident. During Timp's investigation a third employee reported that the claimant told a resident to quit being so childish and to act like an adult. The employer considered this remark the equivalent of verbal abuse because of the resident's mental condition. This employer does not know when this remark was made because the employee did not report it when the comment was made.

The employer talked to the claimant and he did not recall any problems he had with co-workers or any time he had problems with residents. The claimant denied he made the reported comments. On March 23, 2006, the employer discharged the claimant after concluding the employees' reports were credible.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him 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).

The employer established compelling business reasons for discharging the claimant. Based on the employer's investigation, the claimant verbally abused residents three different times. The evidence presented during the hearing does not support the employer's conclusions. The employer relied on hearsay information from people who did not testify at the hearing. The claimant's testimony is credible and must be given more weight than the employer's reliance on hearsay information. While the employer had the benefit of determining the credibility of people who reported the alleged abuse, the administrative law judge was not afforded this same opportunity. A preponderance of the credible evidence does not establish that the claimant commit work-connected misconduct. As of March 19, 2006, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's April 10, 2006 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not establish work-connected misconduct. As of March 19, 2006, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/pjs