

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRENDA JONES
Claimant

APPEAL NO: 11A-UI-05016-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

MOSAIC
Employer

OC: 05-30-10
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 8, 2011, reference 03, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 11, 2011. The claimant participated in the hearing. Stephanie Gehlhaar, Executive Director; Michelle Baldwin, Direct Support Manager; Shanda Hiatt, Human Resources Manager; and Alyce Smolsky, Employer Representative, participated in the hearing on behalf of the employer. Employer's Exhibits One through Five were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time direct support associate for Mosaic from May 28, 2010 to March 17, 2011. She was discharged for threatening and abusive behavior towards individuals she was supporting. The claimant worked in a home that housed three 19-year-old men with mild retardation, autism and ADHD. The clients were expected to do their own cooking, cleaning and laundry with some cleaning help from the three shifts of employees. On March 13, 2011, the claimant returned from church with one of the clients and asked the three young men if they could clean the apartment that day. They were all reluctant and preferred to play video games but the house was "filthy" and the claimant encouraged them to clean without success until she said if they would not clean she was going to take them to the office and tell Executive Director Stephanie Gehlhaar about the situation the following day. She also said that if they did not quit their "bitching" they would have to do more work. She did raise her voice when speaking to the residents but has a loud voice and did not believe she was "yelling and screaming." The clients began cleaning their rooms and eventually thoroughly cleaned the entire apartment with the claimant's help. While they were cleaning the claimant told them she would cook dinner for them as a reward for cleaning. Around 5:00 p.m. Direct Support Manager Michelle Baldwin stopped by the house and felt the residents were more quiet than usual but none of them voiced any concerns about their treatment by the claimant. All three of the young

men hugged the claimant when she left for the day. When Ms. Baldwin arrived at her office across the street from the apartment shared by the three young men the next day, March 14, 2011, one of them came running outside and stated he had something he wanted her to listen to on his I-Pod. Unbeknownst to the claimant one of the clients recorded a portion of her conversations with the residents the previous day and played the recording for Ms. Baldwin. The client said the claimant was threatening them and they were intimidated and scared. One of them said he had not been so scared since he was sexually abused as a minor. The claimant was suspended March 15, 2011, while the employer investigated the situation (Employer's Exhibit One). After listening to the recording and interviewing the clients the employer notified the claimant her employment was terminated March 17, 2011, for being verbally abusive and threatening March 13, 2011. The claimant was suspended September 13, 2010, when working at a duplex where both sides were occupied by two female clients. One client attacked the worker on the other side of the duplex and the claimant heard her calling for help and went to her aid and found her lying on the floor. She ushered the other clients out of the house and then the client who attacked the claimant's co-worker came outside and swore at and swung at the claimant. The claimant sidestepped the punch and yelled at the client and was suspended and received a written warning and suspension for the incident for using inappropriate verbal tones and failing to talk to and redirect the client appropriately and because when that particular client became upset her care plan stated staff was not supposed to talk to her. The claimant was switched to the three male residents' home following that incident. The employer's policy has employees meet with their supervisors' one on one on a monthly basis about any concerns or issues on either's part. During the January 11, 2011, monthly meeting her supervisor noted it would benefit the claimant to refrain at times from creating a "hostile atmosphere in the client's home by allowing her emotions to show if she is angry with them" (Employer's Exhibit Three). On February 8, 2011, they discussed the claimant's frustrations about feeling she was the only staff member "interested and motivated to clean and get the clients to clean" and the claimant stated she was "so frustrated (she) was ready to quit the day before" (Employer's Exhibit Three).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

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 employer has the burden of proving disqualifying misconduct. 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 substantial and 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 claimant was clearly upset about the cleaning situation with the three young men and their apartment March 13, 2011, and did tell them to "quit your bitching" and that if they did not clean she was going to take them to see Ms. Gehlhaar the next day. While it was obviously inappropriate for her to use profanity, the employer could not say why stating she would take them to meet with Ms. Gehlhaar if they did not clean was a threat but the clients took it as a threat. The claimant was quite concerned about the cleanliness of the house and the fact that the residents and other employees did not clean. The apartment had been described as filthy and the claimant mentioned the cleaning issue during her one-on-one meeting with her supervisor February 8, 2011. She was told the situation would be discussed during the next staff meeting "so everyone would know the importance of helping out and getting the clients motivated to clean their own home" (Employer's Exhibit Three). The claimant became frustrated and impatient in a job that requires patience and there may have been a generation gap between the claimant and the three young men. She was suspended September 13, 2010, after yelling at a client who attacked another employee and swore at and swung at the claimant. Although employees were not supposed to talk to that client when she became upset, the claimant's actions in yelling at her after she behaved violently were understandable under the circumstances. With regard to the final incident, the client that audiotaped the client bragged to others that he "got the bitch." He did not like the claimant and had complained about her being "rude, bossy and inappropriate," prompting a mediation meeting between the client, claimant and supervisor in January 2011. It is possible he had an agenda to have the claimant's employment terminated. While not condoning the claimant's actions March 13, 2011, the administrative law judge cannot find that her actions rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The April 8, 2011, reference 03, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs