

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUSAN R RIVERA
Claimant

APPEAL NO. 09A-UI-15157-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KRYSILIS INC
Employer

**Original Claim: 09/13/09
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Susan Rivera filed an appeal from a representative's decision dated October 5, 2009, reference 01, which denied benefits based on her separation from Krysilis, Inc. After due notice was issued, a hearing was held by telephone on November 9, 2009. Ms. Rivera participated personally. The employer participated by Donna Kluss, Human Resources Coordinator; Jodi Ainger, Qualified Mental Retardation Professional; and by Tanya Morales and Camille Usher, Home Managers.

ISSUE:

At issue in this matter is whether Ms. Rivera was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Rivera was employed by Krysilis, Inc. from September 2, 2008 until September 15, 2009. The employer operates an intermediate care facility for profoundly mentally retarded adults. Ms. Rivera worked full-time as part of the direct support staff.

On September 11, Ms. Rivera and a coworker were attempting to provide cares to a resident, Nick, when he became combative. They backed away from him and gave him time to calm himself and then approached him again. He continued to be combative and aggressive, and the last time they attempted to back away from him, he scratched Ms. Rivera. The scratch was approximately 16 inches long and there was minimal bleeding. Ms. Rivera properly reported the incident and the injury.

After she had reported the incident to the employer and was off work, Ms. Rivera contacted her local police department to question what she should do about the incident. She was told it was in her best interest to file a report. The police contacted the employer and investigated the report but indicated that no formal charges would be filed. The employer does not have a policy that addresses the issue of employees contacting police in the event of injury by a resident. The facility does have other residents who can become combative towards staff. As a result of filing the police report, Ms. Rivera was discharged on September 15, 2009.

Ms. Rivera received a verbal warning on March 2, 2009 after she sought medical care from her own doctor for a work-related injury. She did not initially think the injury needed treatment but later determined that it did and saw her own doctor. She received a written warning on September 4, 2009 after she sent another employee to work in a different house rather than go herself. Ms. Rivera was under the impression that the on-call administrator did not care which employee went to the house.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The decision to discharge Ms. Rivera was prompted by the fact that she contacted the police after being injured by a resident. The employer does not dispute that she was, in fact, injured when Nick became combative.

The fact that Ms. Rivera's job involved working with mentally retarded adults did not mean she had to forgo her right to file a police report if assaulted by one of them. Moreover, the administrative law judge does not believe she contacted the police with the intention of filing criminal charges against Nick. She contacted the police only to find out her own rights. It was the police who told her it was in her best interest to file a report. The employer does not have any policy that addresses police contact, either to prohibit it or discourage it. For the above reasons, the administrative law judge concludes that Ms. Rivera's conduct in contacting the police after being assaulted at work did not constitute misconduct.

The next most prior incident involving Ms. Rivera was on August 28. Conduct that occurred on August 28 would not represent a current act in relation to the discharge that occurred on September 15. See 871 IAC 24.32(8). For the reasons stated herein, it is concluded that the employer has failed to sustain its burden of proving that Ms. Rivera should be disqualified from receiving benefits. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). Benefits are allowed.

DECISION:

The representative's decision dated October 5, 2009, reference 01, is hereby reversed. Ms. Rivera was discharged, but disqualifying misconduct has not been established. Benefits are allowed, provided she is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw