

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHAUN D WAYMOTH
Claimant

APPEAL NO: 09A-UI-03391-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RESCARE INC
Employer

OC: 01/25/09

Claimant: Respondent (1)

Section 96.5-2-a – Discharge
Section 96.7-2-a(2) – Charges Against Employer's Account

STATEMENT OF THE CASE:

ResCare, Inc. (employer)) appealed a representative's February 25, 2009 decision (reference 01) that concluded Shaun D. Waymoth (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 2, 2009. The claimant participated in the hearing. Debra Lueck appeared on the employer's behalf and presented testimony from one other witness, Betsy Balster. 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.

ISSUES:

Was the claimant discharged for work-connected misconduct? Is the employer's account subject to charge?

FINDINGS OF FACT:

The claimant started working for the employer on October 1, 2008. She worked part time (approximately 25 hours per week) as a community services support staff in the employer's Washington County program providing services to persons with disabilities. The claimant primarily worked evenings and some overnights at approximately two sites with two or three clients in an apartment at the site. Her last day of work was December 18, 2008. The employer discharged her on December 22, 2008. The reason asserted for the discharge was not handling a situation properly on the morning of December 19 and having too many difficulties turning paperwork.

The claimant had previously been verbally warned about needing to get her billing paperwork in daily and about an instance where she ate a resident's food that was going to be thrown away. The claimant had worked on December 18 from 9:00 a.m. to 3:00 p.m. and then again from 11:00 p.m. that night until 7:00 a.m. on December 19. The morning of December 19 was stormy and the claimant believed that she was needed to stay over to provide additional assistance for the residents since some of them that would normally be going to work would not be able to do

so. She attempted to direct one of the residents in the apartment to go with her to another apartment for staffing. However, the replacement staff did arrive and told the claimant she had the situation covered. The claimant was not immediately convinced and stayed until approximately 7:30 a.m. The other staff member called Ms. Balster to report that the claimant's presence was causing confusion. Ms. Balster called the claimant on her cell phone to tell her the situation was handled and that the claimant should leave. The claimant was already out of the apartment, although she was still in the building waiting for a ride. When Ms. Balster called her the claimant was still upset and spoke excitedly, but she acknowledged that she was leaving.

The claimant had a personal medical issue related to her own condition which resulted in brief hospitalization after December 19. As a result, she did not get her paperwork caught up before December 22, when the employer determined to discharge her due to her reaction and handling of the situation on December 19 and her failure to get her paperwork completed.

The claimant established an unemployment insurance benefit year effective January 25, 2009.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is her behavior on December 19 and her failure to complete her paperwork timely. Misconduct connotes volition. A failure in job performance is not misconduct unless it is intentional. Huntoon, supra. Under the circumstances of this case, the claimant's failures were the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence, or were due to a good faith error in judgment or

discretion. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

The final issue is whether the employer's account is subject to charge. An employer's account is only chargeable if the employer is a base period employer. Iowa Code § 96.7. The base period is "the period beginning with the first day of the five completed calendar quarters immediately preceding the first day of an individual's benefit year and ending with the last day of the next to the last completed calendar quarter immediately preceding the date on which the individual filed a valid claim." Iowa Code § 96.19-3. The claimant's base period began October 1, 2007 and ended September 30, 2008. The employer did not employ the claimant during this time, and therefore the employer is not currently a base period employer and its account is not currently chargeable for benefits paid to the claimant.

DECISION:

The representative's February 25, 2009 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible. The employer's account is not subject to charge in the current benefit year.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs