

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BEVERLY C GRUBE
Claimant

APPEAL NO: 09A-UI-07403-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACC ENTERPRISES LLC
CEDAR HEALTH
Employer

OC: 04/12/09

Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Beverly C. Grube (claimant)) appealed a representative's May 8, 2009 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with ACC Enterprises, L.L.C. / Cedar Health (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 9, 2009. The claimant participated in the hearing. Michael Blume appeared on the employer's behalf. Based on the evidence, the arguments of the parties, a review of the law, and assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on May 1, 2007. She worked full time as a certified nursing aide (CNA) on the second shift in the employer's long-term care nursing facility. Her last day of work was March 26, 2009. The employer discharged her on that date. The reason asserted for the discharge was the employer's conclusion it had a reasonable belief the claimant had been abusive toward a resident.

On March 26 the employer received a report from two family members of another resident that from where they were in their family member's room one had seen the claimant in the open lounge area forcibly shove another resident down into a chair, and both reported hearing the claimant speak overly sternly to the resident. Few other details were available as to the specific observations of the other resident's family members.

The claimant had been at a table with three residents, and was feeding one of them. One of the other two residents determined she needed to take a walk to stretch her legs. She had problems being steady on her legs, and the claimant told the resident to wait a few minutes and she would walk with her. The claimant denied speaking overly harshly, but indicated she spoke

with some level of urgency as she did not want the resident to try walking on her own and fall. She asked the resident to sit back down, and when the resident sat down, she did not get seated squarely in the chair, but caught her leg over the arm of the chair. The claimant then came over and lifted the resident's leg up to get it past the arm of the chair and assisted the resident in getting reseated. She denied being rough or shoving the resident.

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 the allegation she had been rough and stern with the resident, to the point of abuse. The claimant denied these allegations under oath. The employer relies exclusively on the second-hand or third-hand account from the other resident's family members; however, without that information being provided closer to first-hand, the administrative law judge is unable to ascertain whether the family members might have been mistaken, whether they actually observed the entire time from a good vantage point, whether they are credible, or whether the employer's witness might have misinterpreted or misunderstood aspects of the reports. While the employer itself may have had sufficient information to have a reasonable belief so as to make a good business decision to discharge the claimant, it 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.

DECISION:

The representative's May 8, 2009 decision (reference 01) is reversed. 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.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css