

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HEIDI M GEARHART
Claimant

APPEAL NO: 13A-UI-04511-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 03/17/13
Claimant: Respondent (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's April 4, 2013 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because she had been discharged for nondisqualifying reasons. The claimant did not respond to the hearing notice or participate in the hearing. Treve Lumsden represented the employer. David Mollenhoff, the human resource coordinator, Christy Harris, the assistant director of nursing, and Heather William appeared on the employer's behalf. Based on the evidence, the employer's arguments, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in February 2000. She most recently worked as a full-time registered nurse.

On March 29, 2012, the claimant received a final written warning for speaking loudly and inappropriately to a resident. She received the March 24, 2012 warning after a family member of another resident reported the claimant yelled at a resident that she did not have time to deal with him when the resident asked for her assistance. On March 29, 2012, the employer told the claimant that if she spoke inappropriately to anyone in the next 24 months, she would be discharged.

On March 7, 2013, an assistant director of nursing heard the claimant loudly say at the nurse's station that she had ten residents and three f-----admits. Management does care a f---- and I don't care if they fire me. The claimant was blowing off steam but she said this in front of residents, co-workers, guests and management. The employer does not tolerate the use of profanity at work.

On March 8, 2013, the employer discharged the claimant for her attitude and inappropriate comments and behavior the day before.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant knew or should have known her job was in jeopardy until March 29, 2014, after she received her final written warning on March 29, 2012. On March 7, 2013, the claimant was obviously upset, but instead of talking to management about issues that upset her, the claimant blew off steam by making inappropriate, profane comments. Residents, guests and co-workers could hear the claimant's inappropriate comments. The claimant's conduct on March 7 constitutes an intentional and substantial disregard of the standard of behavior the employer has a right to expect from an employee. The claimant committed work-connected misconduct. As of March 17, 2013, the claimant is not qualified to receive benefits.

DECISION:

The representative's April 4, 2013 determination (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of March 17, 2013. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs