

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

DIANA J HODGE
1308 MAIN ST
CENTER POINT IA 52213

SHELLSBURG ASSOCIATES INC
DBA ROCK RIDGE RESIDENTIAL
CARE CENTER
400 CANTON ST NW
SHELLSBURG IA 52332-9606

Appeal Number: 04A-UI-06233-RT
OC: 05-16-04 R: 03
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Diana J. Hodge, filed a timely appeal from an unemployment insurance decision dated May 28, 2004, reference 01, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on June 28, 2004 with the claimant participating. The employer, Shellsburg Associates, Inc., doing business as Rock Ridge Residential Care Center, did not participate in the hearing because the employer did not call in a telephone number, either before the hearing or during the hearing, where any witnesses could be reached for the hearing, as instructed in the notice of appeal. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full-time oral medication technician from February 1, 2004 until she was discharged on May 16, 2004. The claimant was discharged for striking another employee on May 13, 2004. The employee that was struck was acting as a resident while the claimant and another employee practiced transferring her as they would residents. The claimant did not believe that the struck employee was acting appropriately as a resident and was upset and struck her in the back of the head. The employee filed a grievance. During the investigation, at one point, the claimant informed the employer that she did strike the employee in the back of the head but that it would not happen again in the workplace but the claimant could not guarantee that it would not happen in the public. The claimant had a personality conflict with this individual and could not guarantee that she would not strike that person in public.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

Iowa Code Section 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The administrative law judge concludes that the claimant was discharged on May 16, 2004. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. Although the employer did not participate in the hearing, the administrative law judge, nevertheless, finds that there is a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. The claimant testified that she was discharged for striking another employee in the back of the head. The claimant conceded that she did strike that employee in the back of the head while the employee was acting or pretending to be a patient while the claimant and a third coworker were practicing transferring her. The claimant testified that she did so unintentionally or accidentally. However, the claimant's testimony that this was accidental or unintentional is not credible. The claimant testified that she was upset at the worker who was struck because the claimant did not believe that the worker was doing what she was supposed to be doing as a resident. However, the administrative law judge cannot understand how the worker would not be doing something that she was supposed to be doing as a resident. Further, the claimant could not explain how the employee could have been accidentally struck. Further, the claimant testified at first that she did not slap the coworker but later conceded that she had slapped the coworker. Finally, and most convincing, the claimant testified that she did admit to the employer that she had struck the coworker and that it would not happen in the workplace again but could not guarantee that it would not happen in public because the claimant testified she had a personality conflict with this worker. Based upon the totality of the circumstances and the claimant's testimony, the administrative law judge is constrained to conclude that claimant was upset with this employee and struck her and that that striking was not unintentional or accidental. The administrative law judge is not unmindful of the serious problem with workplace violence. Accordingly, and for all the reasons set out above, the administrative law judge is constrained to conclude that claimant's act was a deliberate act constituting a material breach of her duties and obligations arising out of her worker's contract of employment and evinces a willful or wanton disregard of the employer's interests and is therefore disqualifying misconduct. Therefore, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct, and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless she requalifies for such benefits.

DECISION:

The representative's decision of May 28, 2004, reference 01, is affirmed. The claimant, Diana J. Hodge, is not entitled to receive unemployment insurance benefits, until or unless she requalifies for such benefits, because she was discharged for disqualifying misconduct.

tjc/tjc