

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSICA M CUBBAGE
Claimant

APPEAL NO: 13A-UI-09248-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 07/14/13
Claimant: Respondent (1)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct
871 IAC 24.32(8) – Current Act

STATEMENT OF THE CASE:

The employer appealed a department decision dated August 2, 2013, reference 01, that held the claimant was not discharged for misconduct on July 12, 2013, and benefits are allowed. A telephone hearing was held on September 16, 2013. The claimant participated. Jaci Garden, DON, and Cheryl Rodermund, Representative, participated for the employer. Claimant Exhibit A and Employer Exhibit 1 were received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record, finds: The claimant was hired on November 3, 2011, and last worked for the employer as a full-time C.N.A. on July 10, 2013. She received the employer policies in an employee handbook. Resident abuse is ground for termination.

The employer issued a written discipline for cursing at co-worker C.N.A.(s) on June 13, 2013. The employer sent claimant home with a suspension for potential resident abuse on July 10. While claimant was giving a resident a whirlpool on July 10, a resident accused her of cursing. Claimant denies it. Later the resident accused claimant of hitting her arm. Claimant denies it. The employer reported the abuse incident to DIA. It issued an unfounded investigative report. The employer investigation was not conclusive.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The administrative law judge concludes the employer has failed to establish that the claimant was discharged for a current act of misconduct in connection with employment on July 12, 2013. The employer must establish the most recent incident of July 10 is misconduct.

The employer admits its abuse investigation was inconclusive and an official state department report of the complaint is unfounded. The employer conclusion claimant cursed in the past at co-workers is supporting evidence she did at the resident is speculative and does not establish a current act of misconduct.

DECISION:

The department decision dated August 2, 2013, reference 01, is affirmed. The claimant was not discharged for a current act of misconduct on July 12, 2013. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs