

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CANDACE J ALLEN**  
Claimant

**APPEAL NO: 09A-UI-04512-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RESCARE INC**  
Employer

**OC: 08/31/08**  
**Claimant: Respondent (2/R)**

Section 96.5-2- a- Discharge

**STATEMENT OF THE CASE:**

Rescare, Inc. (employer) appealed a representative's March 12, 2009 decision (reference 02) that concluded Candace J. Allen (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 16, 2009. The claimant did not respond to the hearing notice and did not participate in the hearing. Barb Whitten, Christine Mamsen, and Tammy Hudson, the program director, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

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

**FINDINGS OF FACT:**

The claimant started working for the employer on November 12, 2008. The employer hired the claimant to work as a part-time community support staffer. Hudson supervised the claimant.

In December 2008, the employer gave the claimant a verbal warning about smoking cigarettes in the presence of customers. The employer's rules do not allow employees to smoke in the presence of customers.

A customer reported she did not want to work with the claimant again after watching the claimant smoke marijuana while providing services to the customer. The customer reported she knew the odor of marijuana and saw the claimant smoking a pipe that she put in her pocket. When the employer talked to the claimant about the customer's complaint, she initially denied she had been smoking at all. Later, during the conversation the claimant admitted she had been smoking a cigarette, but had not been smoking marijuana. When the employer reminded the claimant the employer's rules did not allow her to smoke in front of customers, the claimant commented that the employer's rules were stupid. On February 25, 2009, the employer discharged the claimant for again violating the employer's no-smoking policy in the presence of customers.

The claimant reopened her claim for benefits during the week of March 1, 2009. The claimant has filed for and received benefits since March 1.

**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 section 96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

After the employer reminded the claimant in December 2008, that the employer did not allow employees to smoke in the presence of customers when providing services, the claimant knew or should have known her job would be in jeopardy if she again smoked in the presence of a customer. The claimant's comment that the employer's rules were stupid demonstrates the disrespect the claimant had for the employer's interests and rules. Finally, the claimant's lack of honesty when she initially denied she had been smoking in the presence of a customer amounts to an intentional and substantial disregard of the standard of behavior the employer has a right to expect from an employee. The facts show the employer discharged the claimant for reasons constituting work-connected misconduct. As of February 22, 2009, the claimant is not qualified to receive benefits.

Since the claimant has filed and received benefits since March 1, the issue of overpayment or whether the claimant is eligible for a waiver of any overpayment must be remanded.

**DECISION:**

The representative's March 12, 2009 decision (reference 02) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of February 22, 2009. 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. The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is remanded to the Claims Section to determine.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs