

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

REBECCA A BILLS
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MYSTIC IA 52574

GOLDEN AGE INC
GOLDEN AGE CARE CENTER
1915 S 18TH ST
CENTERVILLE IA 52544

NUNC PRO TUNC
04A-UI-01009-DT
Appeal Number: OC: 01/04/04 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

STATEMENT OF THE CASE:

Rebecca A. Bills (claimant) appealed a representative's January 28, 2004 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Golden Age, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 19, 2004. The claimant participated in the hearing. David Armington appeared on the employer's behalf and presented testimony from one other witness, Barb Milburn. Based on the evidence, the arguments of the parties, and the law, 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 June 6, 2001. From approximately June 2003, she worked part-time (20 to 28 hours per week) as activity assistant at the employer's long-term care nursing facility. Her last day of work was January 5, 2004. The employer discharged her on that date. The stated reason for the discharge was insubordination by refusal to sign a disciplinary notice.

The claimant had been tardy on December 16, 2003 due to her child's illness and doctor's appointment. Her supervisor, Ms. Milburn, had verbally counseled the claimant at that time. However, Ms. Milburn was concerned that the claimant did not take the counseling seriously, and she was further concerned that the claimant was not displaying an appropriate attitude toward her work duties. She therefore determined to give the claimant a written disciplinary notice.

The disciplinary notice was presented to the claimant on January 2, 2004, and a meeting was scheduled to discuss the notice on January 5. In that meeting, the claimant refused to sign the notice. Mr. Armington, the administrator, read the claimant the employer's policy that specifies that signing the notice is not an admission of guilt, and further that failure to sign a disciplinary notice was considered insubordination that would result in discharge. Further, the notice had a place provided on which an employee could include his or her comments regarding the disciplinary issue. The claimant acknowledged that she understood that if she refused to sign the notice she would be discharged, but she reaffirmed her refusal to sign. She was then discharged. She refused to sign because she felt the warning was unreasonable and she speculated that she was likely going to be discharged in the near future anyway, even though there was no specific evidence to that effect. Continued work was available to the claimant had she signed the notice.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer discharged the claimant for reasons establishing work-connected misconduct. The issue is not whether the employer was right or even had any other choice but 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 decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). 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 Section 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); Iowa Code Section 96.5-2-a.

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).

In Green v Iowa Department of Job Service, 299 N.W.2d 651 (Iowa 1980), the Iowa Supreme Court ruled that failure to acknowledge the receipt of a written reprimand by signing it constitutes work-connected misconduct as a matter of law. In Green, the claimant knew signing the reprimand was merely acknowledging receipt of it and her supervisor warned her that she would be discharged if she did not sign it. Likewise, in this case, the claimant was informed that her signature was an acknowledgement of receipt of the reprimand and not an admission of guilt. Mr. Armington further specifically warned the claimant that a refusal to sign would result in the loss of her employment. The claimant's refusal to sign the disciplinary notice under these circumstances shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's January 28, 2004 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of January 5, 2004. This disqualification continues until the claimant 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.

ld/kjf/b