

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FRANCES C SEE
Claimant

APPEAL NO. 08A-UI-01800-H2

**ADMINISTRATIVE LAW JUDGE
DECISION**

MOSAIC
Employer

**OC: 12-23-07 R: 02
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 18, 2008, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on March 11, 2008. The claimant did participate. The employer did participate through Carol Mau, Executive Director; Jennifer Wyant, Supervisor and Angela Avery, Support Staff. Employer's Exhibit One was received.

ISSUE:

Was the claimant discharged for work-related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a direct support associate full time beginning June 5, 2006 through October 10, 2007 when she was discharged.

On September 28, the claimant applied lotion to a resident's groin and genital area without wearing gloves, which she admitted were required. While applying the lotion, the claimant commented to the resident "I bet that feels good." A coworker asked her why she was not wearing the gloves and the claimant indicated that she liked the feel of the lotion on her hands and that she knew the client so well she did not need to wear gloves. After applying the lotion, the claimant did not wash her hands but went into the kitchen and began preparing food for resident's consumption. Then the claimant, still without washing her hands passed medications. These actions were all witnessed by Ms. Avery, who was a new employee that the claimant was in the process of training. After witnessing the lotion incident, the new employee went to her Supervisor to file a complaint about what she believed to be a violation of the employer's policies.

The claimant has a history of past discipline outlined in the employer's exhibits and had been placed on notice that another rule infraction could lead to her discharge.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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.

The claimant rubbed lotion on the groin and genital area of a patient without wearing gloves. While doing so she made the comment to the resident "I bet that feels good." The claimant knew she was to wear gloves when applying the lotion. The claimant did not wear the gloves. After applying the lotion the claimant did not wash her hands but went immediately to the kitchen where she did not wash her hands prior to both handling food and passing medication. The claimant's actions were reported by a new employee who had no reason to fabricate any occurrences. The administrative law judge is persuaded that the claimant acted in violation of the employer's rules when she applied the lotion without gloves. The comment made by the claimant could easily be interpreted as abusive since she made it while rubbing a client's genitals. The claimant knew or should have known that wearing gloves and washing her hands were required of her. Her actions amount to misconduct sufficient to disqualify her from receipt of unemployment insurance benefits.

DECISION:

The February 18, 2008, reference 02, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs