

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DANNETTA G MILLER**  
Claimant

**APPEAL NO. 11A-UI-11867-N**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OPTIMAE LIFESERVICES INC  
DOVETAIL BUSINESS SOLUTIONS**  
Employer

**OC: 08/07/11  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated August 31, 2011, reference 01, which denied unemployment insurance benefits . After due notice, a hearing was held in Ottumwa, Iowa on November 8, 2011. Claimant participated personally. Although duly notified, the employer did not participate.

**ISSUE:**

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having considered the evidence in the record, finds: Dannetta Miller was employed by Optimae Lifeservices Inc. as a full-time certified nursing assistant at the company's nursing facility for mentally handicapped elderly individuals. The claimant was employed from December 2009 until August 8, 2011 when she was discharged from employment. Ms. Miller was paid by the hour and her immediate supervisor was the charge nurse on duty each shift.

Ms. Miller was discharged after it was reported to the company that she had stated "shut up" to a resident at the nursing facility on the night of August 7, 2011.

During the incident Ms. Miller had stated to the resident "please shut up" after the resident had yelled in the claimant's ear. Ms. Miller then apologized to the resident and proceeded to prepare the resident for bed. The resident in question had been in pain because of a hip condition and the charge nurse on duty had elected not to issue pain medication to the resident for a substantial period of time. The resident had been in pain and yelling for a substantial period of time before the claimant arrived at work. Other residents were upset because of the resident's ongoing yelling and demeanor.

Prior to the incident in question the claimant had not been warned or counsel about conduct similar to this. It was not the claimant's intention to demean the resident but to get the resident to be quiet after the resident had startled the claimant by yelling into Ms. Miller's ear.

### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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.

The employer bears the burden of proof in establishing intentional job disqualifying misconduct. See Iowa Code section 96.6.2. The question is not whether the employer made a wise decision to terminate the claimant but whether the evidence in the record establishes conduct sufficient to warrant the denial of unemployment insurance benefits.

In this matter the claimant appeared personally and testified personally that she did not intend her demeanor humiliate the resident in question and that she did not raise her voice or yell at the resident. The claimant's intention was to quiet the resident who had been disruptive. Ms. Miller stated "please shut up" as a form of excited response to the resident suddenly yelling into Ms. Miller's ear. The claimant had not been previously warned or counseled about similar conduct prior to her discharge.

While the decision to terminate Ms. Miller may have been a sound decision from a management viewpoint, there being no evidence to the contrary, the administrative law judge concludes that the claimant's conduct was an isolated incidence of poor judgment and not sufficient to warrant the denial of unemployment insurance benefits.

**DECISION:**

The representative's decision dated August 31, 2011, reference 01, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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