

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KASSANDRA C HECKART
Claimant

APPEAL NO. 09A-UI-02133-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOOD SAMARITAN SOCIETY INC
Employer

OC: 12/21/08
Claimant: Respondent (4)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated February 5, 2009, reference 04, that concluded the claimant was laid off due to lack of work on December 23, 2008. A telephone hearing was held on March 3, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. Fred Metcalf participated in the hearing on behalf of the employer. Exhibits One through Six were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a certified nursing assistant in the employer's nursing home from August 24, 2007, to March 17, 2008. The claimant was informed and understood that under the employer's work rules, abusive treatment of residents was prohibited, cell phones were not to be used in resident care areas, and residents requiring two-person assists were not to be transferred by one CNA.

On March 3, 2008, the claimant received a written warning for repeatedly using a cell phone in the resident care areas.

On March 14, 2008, the claimant transferred a resident requiring a two-person assist by herself. The resident fell during the transfer. She received a final warning for this violation on March 17.

After the claimant received the final warning, she was rude in speaking to a resident and raised her voice toward the resident causing the resident to be alarmed and frightened. She was discharged for this conduct and her history of prior discipline on March 17, 2008.

The claimant reapplied for employment with the employer in December 2008. She was originally offered employment, but the offer was rescinded before the claimant actually started working.

The claimant filed a new claim for benefits with an effective date of December 21, 2008. After March 17, 2008, the claimant had earned more than ten times her weekly benefit amount in other employment before she filed this claim.

REASONING AND CONCLUSIONS OF LAW:

The Agency determined the claimant had been laid off due to lack of work on December 23, 2008. This determination is incorrect since the employer never re-employed the claimant in December 2008.

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's conduct was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case. The claimant, however, is not disqualified since she has earned enough wages since her separation to requalify.

Iowa Code § 96.7-2-a(2) provides that the amount of benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred unless the individual has been discharged for work-connected misconduct or voluntarily quit employment without good cause attributable to the employer or refused suitable work without good cause.

The employer's account is not chargeable for benefits paid to the claimant.

DECISION:

The unemployment insurance decision dated February 5, 2009, reference 04, is modified in favor of the employer. The claimant was discharged for work-connected misconduct on

March 17, 2008, but has requalified since then. The employer's account is not chargeable for benefits paid to the claimant.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

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