

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**ANGELA L LIDDELL**  
Claimant

**APPEAL 15A-UI-08712-JCT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DEVELOPMENTAL SERVICES OF IOWA**  
Employer

**OC: 07/12/15  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the July 31, 2015, (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. Telephone hearings were held on August 25, and August 27, 2015. The claimant participated personally. The employer participated through Michelle Cleaver. Ashley Simoni also testified for the employer. Employer Exhibits One through Three were admitted into evidence.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a direct support specialist and was separated from employment on July 10, 2015, when she was discharged (Employer Exhibit One).

The employer provides care for persons with physical and mental disabilities, and the claimant was responsible for accompanying and supervising up to three persons at one time. The employer has policies which prohibit abusive, mistreatment or neglect of individuals served by the employer (Employer Exhibit Two). The claimant was aware of the policies upon time of hire.

The final incident occurred on May 2, 2015. The claimant was responsible for two individuals, KP and AE on that day. Earlier in the day, KP had broken furniture while upset, and later the claimant had to contact her front line supervisor, for guidance, when KP refused for 45 minutes to get into the car after a visit to Walmart. KP and AE had a history of tension and it escalated after returning from Walmart. The claimant again reached out to her front line supervisor, who advised she would speak to AE to help deescalate.

While AE was on the phone with the front line supervisor in the living room, the claimant stood on the porch with KP, with the door open, keeping AE in her line of sight while AE was in the living room. AE appeared to have calmed down and immediately went to the bathroom upon

hanging up the phone. AE, a known “cutter”, had from time to time, been required to have supervision or keep doors open while in the bathroom, but had not exhibited signs of needing such supervision recently. AE took the light bulb out from the light, and cut herself. The claimant heard the light bulb break and immediately broke the bathroom door down to tend to AE, who had light, superficial scratches that required only a band-aid. The claimant was then advised by the employer that because of the incident, she needed to manually remove all other light bulbs in the home. While she was removing light bulbs, KP again became agitated and shoved the claimant, who lost her balance while on the stairs and fell.

On May 5, 2015, the claimant's immediate manager, Alisa Luker, issued a written warning for the incident (Employer Exhibit Three). The claimant was not made aware that the matter was still under investigation. However, the employer then suspended the claimant on May 7, 2015, and discharged her on July 10, 2015, for violating the employer's rules with regard to mistreatment, neglect and abuse (Employer Exhibit One).

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. No willful and substantial misconduct has been proven in this case. No negligence was proven by the evidence in this case. Even if the claimant was negligent, the rules and the case law indicate that a single act of negligence is insufficient to demonstrate “repeated negligence of such a degree of recurrence” that it equals willful misconduct in culpability. Henry v. Iowa Department of Job Service, 391 N.W.2d 731 (Iowa App. 1986). The employer alleged the claimant's conduct violated its policies and work rules with regard to mistreatment, neglect or abuse. The employer, however, presented no evidence of the work rules that were violated or even any evidence of the claimant's actual conduct on May 2, 2015. The claimant was supervising two volatile individuals, who needed direct care, but at the time could not be together because they were fighting. The claimant twice reached out for additional support by way of her front line supervisor, to deescalate the situation, and had her manager on the line with AE while the claimant watched her, and simultaneously supervised KP on the porch. Both individuals served showed propensity of violence that day; KP by shoving the claimant, who fell down the stairs, when removing extra light bulbs, and AE who removed a light bulb, broke it and began cutting herself after a phone call with the claimant's manager.

The administrative law judge is persuaded the claimant performed her job duties that day to the best of her ability under the challenging circumstances. Cognizant of the employer's duty to protect its clients from abuse and neglect, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant was in fact, negligent, abusive or mistreating AE or KP on May 2, 2015. While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established in this case.

Nothing in this decision should be interpreted as a condemnation of the employer's right to terminate the claimant for violating its policies and procedures. The employer had a right to follow its policies and procedures. The analysis of unemployment insurance eligibility, however, does not end there. This ruling simply holds that the employer did not meet its burden of proof to establish the claimant's conduct leading separation was misconduct under Iowa law. Since the employer has not met its burden of proof, benefits are allowed.

**DECISION:**

The July 31, 2015, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. The benefits claimed and withheld shall be paid, provided she is otherwise eligible.

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Jennifer L. Coe  
Administrative Law Judge

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Decision Dated and Mailed

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