

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHERRIE L HACKERT
Claimant

APPEAL NO: 12A-UI-00963-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COMMUNITY CARE INC
Employer

OC: 05/01/11
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's January 20, 2012 determination (reference 03) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated in the hearing. Paula Beddingfield, the claimant's supervisor, and Theresa Cali appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons that constitute work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in September 2010 as a direct support professional. The claimant went to the homes of disabled clients and provided them services. The employer requires employees to act professionally at all times when in the presence of a client.

During her employment, the claimant received several warnings for unprofessional behavior. On February 28, 2011, the claimant received a written warning for professionalism when she made uncomplimentary remarks about a co-worker in the presence of clients. On May 1, the claimant received a one-day suspension when a client did not appreciate how the claimant treated her in public. In July the employer gave the claimant a copy of the code of ethics and the employer's professionalism policy. On September 28, the claimant received a two-day suspension and a last-chance letter for again being unprofessional at work. After receiving the September 28 warning, the claimant understood her job was in jeopardy and she should not say anything about anyone.

On December 12, a client reported that the claimant made a comment about a co-worker that the client considered disrespectful. The client reported the claimant said a co-worker was grouchy because that co-worker needed to get laid. Two other clients were also at the house.

One of the clients reported he was ashamed that he agreed the co-worker was grouchy and why she was grouchy. A third client also reported the claimant made the comment about her co-worker. Beddingfield talked to the three clients.

On December 15, 2011, when Beddingfield talked to the claimant, she denied she made the comment the clients reported. Instead, she told the employer that one of clients made the remark and she told him that his comment was inappropriate. The employer concluded the clients' reports were credible since the claimant had received written warnings about her professionalism and did not make a written report about the comment in her documentation notes. The employer discharged the claimant on December 15 for continuing unprofessional behavior in the presence of clients.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. 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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

After receiving several warnings for unprofessionalism and the two-day suspension in late September 2011, the claimant understood her job was in jeopardy. Based on the claimant's prior warnings and there were three clients who reported the claimant made a comment that a co-worker was grouchy because she needed sex, the employer established justifiable business reasons for discharging the claimant. The claimant's testimony is credible that she did not make this comment is credible. The claimant's testimony must be given more weight than the employer's reliance on information from potential witnesses who did not participate at the hearing. The claimant's denial that she made the comment and instead told the client who made the comment that it was inappropriate does not establish that she committed a current act of work-connected misconduct. As of December 11, 2011, the claimant is qualified to receive benefits.

DECISION:

The representative's January 20, 2012 determination (reference 03) is reversed. The employer discharged the claimant for justifiable business reasons. The evidence does not establish that the claimant committed a current act of work-connected misconduct. Therefore, as of

December 11, 2011, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to her.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css