

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DEBORAH A SCHUCHMAN**  
Claimant

**APPEAL NO. 17A-UI-05178-TN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OPTIMAE LIFESERVICES INC**  
Employer

**OC: 03/26/17  
Claimant: Appellant (2)**

Iowa Code § 96.5 (2)a - Discharge

**STATEMENT OF THE CASE:**

The claimant, filed a timely appeal from a representative's decision dated May 8, 2017, reference 01, was denied unemployment insurance benefits finding that the claimant was discharged from work March 28, 2017 for violation of known company rule. After due notice was provided, a telephone hearing was held on June 1, 2017. Claimant participated. The employer participated by Ms. Jessica Yager, Supervisor.

**ISSUE:**

Whether the claimant was discharged for misconduct sufficient the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having considered all of the evidence in the record, finds that: Deborah A. Schuchman was employed by Optimae Lifeservices, Inc. June 28, 2016 until March 28, 2017 when she was discharged from employment. Ms. Schuchman worked as a part-time Direct Support professional providing services to intellectually and physically disabled individuals in a home setting. Claimant was paid \$10.00 per hour. Her immediate supervisor was Jessica Yager.

The decision was made to terminate Ms. Schuchman because of a number of incidents that had taken place where the employer believed Ms. Schuchman had not exercised good work judgment in dealing with clients and had not demonstrated the level of competency expected by the employer. During Ms. Schuchman's employment, Optimae had received a number of complaints from clients and staff members about the way Ms. Schuchman performed her duties.

Although the employer had provided initial training to Ms. Schuchman as well as additional and remedial training, Ms. Schuchman was not meeting the employer's expectations regarding interacting with clients, writing reports, and following directions given to her by her supervisor, Ms. Yager.

In an effort to improve Ms. Schuchman's performance, her supervisor met with the claimant on a semi regular basis to provide verbal coaching. The claimant was encouraged to complete her

paperwork and leave the facility at the end of her shift. The claimant was given instructions on the type of reports that she should be writing. The claimant was also coached about her use of language, smoking, and keeping client information confidential. Although claimant received numerous verbal coaching from her supervisor, the claimant received only one formal write up that took place February 22, 2017.

The February 22, 2017 warning referenced the claimant's tardiness and a potential HIPAA violation by the claimant when she had allowed her husband to drive herself and a client back to the group home when Ms. Schuchman's vehicle broke down unexpectedly. Ms. Schuchman was also warned about not adding non-essential items to client grocery lists. The final incident that caused the discharge occurred when Ms. Schuchman made a derogatory reference to a client when discussing an issue about the client's demeanor with her supervisor Ms. Yager. Because of the totality of the issues that had taken place during the time Ms. Schuchman had been employed, the employer made a management decision to separate Ms. Schuchman from employment. The employer concluded Ms. Schuchman did not have the aptitude ability to deal with the type of work that the company was performing, but considered the claimant's staying over after her shift ended and the issues of the claimant's tobacco use to be intentional violations of policy.

Ms. Schuchman denies that she continued violate the smoking policy assuming that she only used an electronic type of cigarette in designated areas at the end of her employment. The claimant denies staying over to complete paperwork after being counseled not to do so.

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

The question before the administrative law judge is whether the evidence in the record establishes intentional misconduct on the part of the claimant sufficient the denial of unemployment insurance benefits, it does not.

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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

A claimant is not qualified to receive unemployment insurance benefits if discharged by an employer for reasons that constitute work connected misconduct. See Iowa Code Section 96.5 (2) A. The employer has the burden to prove that the claimant was discharged for work connected misconduct as defined by the Iowa Security Law. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The propriety of the discharge is not the issue in a contested unemployment case. The 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 into willful wrong doing or repeated carelessness, negligence that equals willful misconduct culpability. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000).

For unemployment insurance benefits purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations that arise out of a workers contract of employment. Misconduct 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 the employee's duties and obligations to the employer. Rule 871 IAC 24.32(1)a

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 deemed misconduct within the meaning of the statute. Rule 871 IAC 24.32(1)a

In this matter the employer had justifiable business reasons to discharge the claimant. Based upon the evidence in the record, the administrative law judge concludes that the majority of the claimant's unsatisfactory performance was caused by inability, incapacity and inadvertence. The claimant did not possess the necessary skills or the ability to do her job at the level of competence expected by her employer. The claimant had on-going difficulty understanding her role and understanding the semi-complex nature of the employer's report writing requirements. The claimant had difficulty as well in understanding and applying the employer's rules in the employment setting. At the end of her employment the claimant believed that she was authorized to report to work later than usual but should have been given some accommodation in reporting time due to transportation problems and the claimant believed that smoking a cigarette in limited settings did not violate the company's rule against tobacco use.

The issue before the administrative law judge in this case is not whether the employer had the right to discharge Ms. Schuchman for these reasons, but whether the discharge to place under disqualifying conditions within the meaning of the Iowa Security Law. While the decision to terminate the claimant was a sound decision from a management viewpoint, the evidence in the record does not establish intentional misconduct on the part of the claimant sufficient the denial of unemployment insurance benefits. The claimant's poor performance was not intentional but

because she lacked the ability to work. Benefits allowed provided the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated May 8, 2017, ref 01 is reversed. Claimant was discharged under non disqualifying conditions. Unemployment insurance benefits are allowed provided claimant is otherwise eligible.

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Terry P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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