

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSICA M SCHOTT
Claimant

APPEAL NO. 11A-UI-10725-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KRYSILIS INC
Employer

OC: 07/03/11
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer filed a timely appeal from a representative's decision dated August 4, 2011, reference 01, which held the claimant eligible to receive unemployment insurance benefits. After due notice was issued, a telephone hearing was held on September 7, 2011. The claimant participated personally. The employer participated by Mr. Tom Kuiper, hearing representative, and witnesses Denise Holst, program coordinator, and Chelsea Ray, direct support staff member. Employer's Exhibits 1 through 4 were received into evidence.

ISSUE:

At issue is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Jessica Schott was employed by Krysilis, Inc. as a full-time direct support staff member from October 26, 2010, until June 29, 2011, when she was discharged from employment. The claimant was paid by the hour. Her immediate supervisor was Ms. Rose Holmes.

Ms. Schott was discharged based upon a report from a coworker that the claimant had made an inappropriate statement to a home resident and that the claimant had, at times, put the resident to bed too early. Krysilis is a human service organization providing assistance to intellectually and physically disabled individuals in group homes.

Based upon the report, the employer believed that the claimant was failing to promote and respectful atmosphere for the individuals being served in the group homes. Because the statements attributed to the claimant seemed to be demeaning, the employer believed that it was appropriate to discharge the claimant, as well as report the conduct to a branch of a regulatory authority that oversees the care of vulnerable individuals.

Ms. Schott believed that she was following required procedures by allowing residents to go to bed in early evening, provided that they had prepared themselves for bed and indicated no objection to going to be at that time.

Ms. Schott had made a statement to an individual who was eating with his fingers that the practice was “disgusting.” The statement was made in an effort to change the individual’s conduct and was not intended by the claimant at the time to demean or embarrass the individual.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record is sufficient to warrant the denial of unemployment insurance benefits. It is 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 has the burden of proof in establishing disqualifying job misconduct. See Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant, but whether the claimant is entitled to unemployment insurance benefits. See Infante v. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984). Misconduct serious enough to warrant discharge is

not necessarily serious enough to warrant the denial of job insurance benefits. Such misconduct must be "substantial."

In this matter, the evidence in the record does not reflect that the claimant intentionally violated known rules or procedures. The claimant believed that she was acting appropriately in allowing individuals to go to bed earlier than others if they had prepared themselves for bed and did not object to going to bed. The statement attributed to the claimant that she made in response to a home resident eating with his fingers was not intended to be demeaning or embarrassing. While in hindsight the claimant may have chosen to state her message to that individual differently, the administrative law judge concludes that the claimant's statement was an isolated instance of poor judgment but did not rise to the level of intentional disqualifying misconduct.

While the decision to terminate Ms. Schott may have been a sound decision from a management viewpoint, the evidence in the record does not establish intentional disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's decision dated August 4, 2011, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw