

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ALICE R HOLMAN**  
Claimant

**APPEAL NO: 12A-UI-11352-ST**

**OPTIMAE LIFESERVICES INC**  
Employer

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/19/12  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct  
871 IAC 24.32(8) – Current Act

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated September 18, 2012, reference 02, that held she was discharged for misconduct on August 24, 2012, and benefits are denied. A telephone hearing was held on October 16, 2012. The claimant participated. Connie Dusek, Regional Manager, participated for the employer. Employer Exhibit 1 was received as evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment as a part-time community support worker on August 22, 2011, and last worked for the employer on August 24, 2012. The claimant received an employee handbook that contained the policies of the employer, as it applies to conduct and work rules. The claimant is put on notice that she can be disciplined for unsatisfactory conduct.

The employer issued claimant a written warning on June 26, 2012 and put her on a work plan regarding a boundary issue. Claimant had shared staff personal information with a customer. On August 13 claimant and another support employee were providing care for a client. Claimant used the client's apron to wipe her face. The client made a remark and claimant responded with something like I thought you would like that. The support person reported the incident to the employer and the employer investigated.

Claimant was contacted by her supervisor the following week that she had crossed a boundary by using the client's apron to wipe her face. Claimant admitted she did it but not for the purpose of arousing any sexual response from the client who she knew had issues with sexuality. The employer discharged claimant on August 24 for a violation of its work conduct rule by crossing a

boundary issue with a client in light of a prior warning. The employer had allowed claimant to continue to work through the investigative process but moved her to other clients.

**REASONING AND CONCLUSIONS OF LAW:**

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 administrative law judge concludes the employer has failed to establish claimant was discharged for a current act of misconduct in connection with employment on August 24, 2012, for a repeated violation of company work conduct policy.

The claimant denies that she used the client's apron located near his crotch to sexually arouse him when she wiped her face. Although claimant's supervisor notes about the incident is contained in the employer documentation, the staff person who observed the incident did not testify or submit a signed written statement. The employer did not consider the incident serious enough to suspend claimant though it moved her to other clients in her continuing employment over the following 11 days.

Job disqualifying misconduct is not established because the August 11 incident is not established as a serious current act of misconduct issue for the reasons stated above.

**DECISION:**

The department decision dated September 18, 2012, reference 02 ,is reversed. The claimant was not discharged for a current act of misconduct on August 24, 2012. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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