

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEANNETTE L HARRISON
Claimant

APPEAL NO: 15A-UI-07102-LDT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOOD SAMARITAN SOCIETY INC
Employer

OC: 05/24/15

Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Good Samaritan Society, Inc. (employer) appealed a representative's June 10, 2015 decision (reference 01) that concluded Jeannette L. Harrison (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 29, 2015. The claimant participated in the hearing and was represented by Sarah Wolfe, Attorney at Law. Nancy Brecht appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Affirmed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on July 9, 2013. She worked full time as cook in the employer's Indianola, Iowa long-term care nursing and rehabilitation facility. Her last day of work was May 21, 2015. The employer discharged her on that date. The reason asserted for the discharge was an incident on May 12 where a family member became upset with the claimant.

On May 12, a family member came into the dining room with the resident at about 5:00 p.m. and asked that the resident be given a grilled cheese sandwich rather than the entrée of the evening. The claimant did not refuse, but indicated that "we prefer" that alternative orders be in by 4:30 p.m., before the start of serving. The family member became very upset, thinking that the claimant was refusing to provide the grilled cheese sandwich, so Brecht, the staff education coordinator, stepped in to try to ease the family member's concern. The claimant was busy serving other residents so she did not take the time to explain to the family member that the

sandwich would be prepared and served to the resident at the same time the rest of the resident's table would be served, or to explain that if the staff knew ahead of time they could pre-prepare the sandwich so that it would be more quickly prepared at the time needed for serving. Brecht referred the matter on to other management, and another member of management spoke to another family member of the resident; that other member of management told Brecht that this other family member stated that this had happened on another occasion; however, the claimant denied that there had ever been another similar incident with this resident's family.

The claimant had received some prior discipline for unrelated type issues, most recently on October 15, 2014 when she was given a final warning on a food safety issue for leaving a tray of food out at room temperature for 15 minutes. There had not been any prior warning regarding interactions or communications with residents or residents' family members. However, the employer determined to discharge the claimant after the May 12 incident.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is the incident on May 12 regarding her lack of ideal communication with the family member. There had not been any prior similar issues, and the most recent unrelated issue was seven months in the past. The employer has not established that the claimant's lack of full communication with the family member was substantial misbehavior, as compared to inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, or a good faith error in judgment or

discretion. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's June 10, 2015 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css