

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHARLENE A MURPHY**  
Claimant

**APPEAL NO. 10A-UI-16638-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**OC: 10/10/10**  
**Claimant: Appellant (2)**

Section 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's December 7, 2010 determination (reference 01) 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 with her witness, Peggy Atchison. Susan Schneider, attorney at law, represented the employer. Glenn Williams, the dietary manager, and Tabitha Wilker, the administrator, appeared on the employer behalf. During the hearing, Employer Exhibits One through Six were offered and admitted as evidence. 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 constituting work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in March 1987. She worked as a full-time day cook. The claimant's job duties required her to cook meals and plate the food for residents. She did not plate desserts, serve residents food, or clean tables.

The claimant understood the employer had a progressive disciplinary policy. For Class C or minor offenses, the employer first counseled an employee, followed up with a verbal warning, a written warning, a final written warning and then terminated for subsequent infractions. (Employer Exhibit Three.) The employer counseled or coached the claimant on August 31 2009, for serving cold french toast to residents. (Employer Exhibit Six.) On June 30, 2010, she received a verbal warning for serving a resident mushrooms when that resident was allergic to mushrooms. (Employer Exhibit Five.) On September 17, 2010, the employer gave the claimant a written warning for serving food that was not as hot as it should have been. (Employer Exhibit Four.)

On September 19, 2010, Resident A and B reported the claimant jerked a cup of coffee out of Resident A's hand and took pie away from Resident B. After receiving these complaints, Williams talked to the other two residents that sat at the same table as Resident A and B. Neither one of these residents saw what Residents A and B reported. Even though no one else saw or observed the behavior report by Residents A and B, the employer concluded these residents were cognizant and credible. When the Williams talked to the claimant on September 23, she denied doing either

one of these things. The employer concluded she had been disrespectful toward both these residents and had committed a Class A offense. Since a Class Offense A is more serious than a Class C offense, the employer bypassed giving the claimant a final warning and discharged her instead. (Employer Exhibit One and Two.)

#### **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).

The employer established justifiable business reasons for discharging the claimant. For unemployment insurance purposes, the evidence does not establish that she committed work-connected misconduct. Therefore, as of October 10, 2010, the claimant is qualified to receive benefits.

#### **DECISION:**

The representative's December 7, 2010 determination (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of October 10, 2010, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

---

Debra L. Wise  
Administrative Law Judge

---

Decision Dated and Mailed

dlw/kjw