

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROSEANN K PERLEBERG
Claimant

APPEAL NO: 11A-UI-16148-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DIERCKS SENIOR CARE LLC
Employer

OC: 11/20/11

Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Roseann K. Perleberg (claimant) appealed a representative's December 15, 2011 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Diercks Senior Care, L.L.C. (employer). After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on January 10, 2012. The claimant participated in the hearing. Candy Diercks 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 denied.

FINDINGS OF FACT:

The claimant started working for the employer on May 18, 2009. She worked part-time as a non-medical caregiver. Her last day of work was November 17, 2011. The employer discharged her on that date. The stated reason for the discharge was being at a client's home other than on scheduled time.

The claimant was aware of the employer's policy that she, as an employee, could not be at a client's home other than when she was scheduled to be working. The policy is designed to protect the employer from liability from when its employees are in a client's home, as well as to discourage inappropriate relationships between its employees and its clients, such as where an employee might do extra work for a client which is not billed to the employer, but for which, for example, the client might pay the employee directly.

On November 15 the claimant was scheduled to be at a client's home from 5:00 p.m. to 7:00 p.m. She clocked out with the employer and indicated she was leaving at 7:00 p.m. However, the claimant was still at the home until about 8:20 p.m. She indicated that she had stayed to write up some paperwork and because the client had not taken a shower as had been planned before 7:00 p.m. The client fell in the shower at about 7:30 p.m. and was injured. The claimant immediately called a neighbor for assistance; she did not call the employer until about 7:55 p.m.

While the employer was still investigating the November 15 incident, on November 17 the claimant went to a client's home when she was not scheduled. She was accompanying another employee who was scheduled to work, and indicated she was there just to visit the client as a friend. Because of these two known incidents of the claimant violating the employer's policy, the employer discharged the claimant.

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); Iowa Code § 96.5-2-a.

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 that was a material breach of the duties and obligations owed by the employee to the employer. 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 that 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. 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's being at a client's home while she was not scheduled to be there shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's December 15, 2011 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of November 17, 2011. This disqualification continues until the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw