

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CATHERINE S GUTHART
Claimant

APPEAL NO. 13A-UI-13088-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAITH LUTHERAN HOME CORP
Employer

OC: 10/27/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated November 18, 2013, reference 01, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a hearing was held on December 16, 2013, by telephone conference call. The claimant participated personally. The claimant was represented by Katherine Evans, Attorney at Law. The employer participated by Ladonna Gunderson, Administrator; Nikki Belz, Director of Nursing; and Holly Blair, Certified Nursing Assistant. The record consists of the testimony of Nikki Belz; the testimony of Ladonna Gunderson; the testimony of Holly Blair; the testimony of Catherine Guthart; and Employer's Exhibits 1-10.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a nursing home located in Osage, Iowa. The claimant was hired on April 23, 2013, as a full-time licensed practical nurse. The claimant's last day of work was October 29, 2013. She was terminated on October 29, 2013.

The incident that led to the decision to terminate the claimant occurred on October 28, 2013. The claimant put a medication called Miralax in the drink of another employee named Amber. She texted another employee named Holly Blair that she had given Amber a "shitload" of Miralax and that she could not stop laughing inside about what she had done. Ms. Blair had seen the claimant put Miralax in another employee's drink approximately one week earlier. When another employee left to answer a call, the claimant ran into a resident's room and got some Miralax. She put the Miralax in the drink and shook it up. Ms. Blair did not report the incident because she was so shocked. She did report the text messages she had received from the claimant on October 28, 2013.

Miralax is a laxative and can cause loose stools and abdominal distress.

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The employer has the burden of proof to show misconduct.

The claimant is not eligible for unemployment insurance benefits. The findings of fact show how the credibility issues were decided in this case. Although the claimant denied putting Miralax in Amber's drink on October 28, 2013, she admitted sending a text message to Ms. Blair saying that she did do it. The text message was read into the record and the most reasonable inference from the language in that text message is that the claimant did indeed put Miralax in Amber's drink. For example, she said that she could "not stop laughing inside" over what she had done. Ms. Blair did not see this as a private joke because she did report the incident to the employer. Ms. Blair had also witnessed the claimant doing the exact same thing approximately one week previously. The greater weight of the evidence is that the claimant did spike the drinks of co-workers and took pleasure in doing so. This type of behavior breaches fundamental duties owed by the claimant to the employer. The claimant could have harmed a fellow employee and her conduct shows a pattern of immature and unprofessional behavior. This is misconduct. Benefits are denied.

DECISION:

The decision of the representative dated November 18, 2013, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid

wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css