

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENISE M CULBERTSON

Claimant

APPEAL NO. 13A-UI-04521-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RESIDENTIAL ALTERNATIVE OF IOWA

Employer

OC: 03/17/13

Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated April 5, 2013, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on May 20, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Kyle Kruckenberg participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked as a certified nursing assistant from July 10, 2012, to March 20, 2013. The assistant administrator, Kyle Kruckenberg, had warned her in January 2013 about displaying a negative attitude.

In March 2013, the claimant was not selected for a shift coordinator position she had applied for. She felt she had previously performed some of the shift coordinator duties and more than her share of the work. At one point, an aide suggested the claimant take an extra task on of showering a resident. She told other aides she was going to do her assigned work and would not be taking on extra duties. The claimant asked to go to PRN (on-call) status, but was told the employer did not have such a position.

Aides untruthfully reported to management that the claimant had told them that she was not going to perform her job duties anymore and had said that management did not know what it was doing.

As a result of what the aides reported to management and the past warning given by Kruckenberg, the employer discharged the claimant for her poor attitude and unwillingness to perform her job duties on March 20, 2013.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant testified under oath and subject to cross-examination. Her testimony was credible and outweighed the employer's evidence, which was second-hand evidence from persons who were not at the hearing.

No current act of work-connected misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated April 5, 2013, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs