

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RONALDO R MORALES**  
Claimant

**APPEAL NO: 09A-UI-19169-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IA DEPT OF HUMAN SVCS/WOODWARD**  
Employer

**OC: 11/29/09**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer appealed a representative's December 16, 2009 decision (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. A telephone hearing was held on February 3, 2010. The claimant participated in the hearing. David Williams, a TALX representative, appeared on the employer's behalf. Diane Stout and Denise Conrad testified on the employer's behalf. Ike Rocha interpreted the hearing. 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:**

Did the employer discharge the claimant for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working as a full-time resident treatment worker on August 3, 2007. The claimant understood that if a resident wanted to leave a room, employees could not restrain or force the resident to stay in a room.

The claimant worked on October 2, 2009. He had been watching a resident who appeared agitated until he took a ten-minute break around 5:40 p.m. When the claimant came back from his break, he noticed this resident's door had been tied shut so she could not leave her room. The claimant removed the restraint so the resident could leave her room. The claimant continued to watch the resident. The claimant did not see who put the restraint on the door. The claimant did not report seeing the soft-tie restraint on door during his shift, but he understood he had 24 hours to do so.

The employer received information about the soft-tie restraint and talked to the claimant the next day, October 3. When Conrad talked to the claimant on October 3, he told her who had put the soft-tie restraint on the door. He later recanted this and indicated he did know who had done this because he had not seen anyone do this. The person who may have put the soft-tie restraints on the door was an employee who had worked longer for the employer than the

claimant. The employer initially understood the claimant saw the restraint, but did not remove it. The employer suspended the claimant on October 3. Although the employer told the claimant not to talk to anyone about what had happened or what the employer talked to him about, the claimant did not understand his job was in jeopardy if he did. The claimant denied he talked to any other employee about the soft-tie restraint incident.

The employer completed its investigation on October 14, 2009. The employer discharged on the claimant November 5, 2009. The employer discharged the claimant because he did not report seeing the restraints on doors and violated the employer's policy about physically abusing residents when he did not remove the restraints when he saw them.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him 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).

Based on the evidence presented during the hearing, the claimant did not commit work-connected misconduct. The facts establish he removed the restraints on the door when he saw them. Even though the claimant did not report seeing the restraints on the doors before Conrad talked to him on October 3, he understood he had 24 hours to make such a report. While the employer had been told the claimant shared information with other employees after the employer talked to him on October 3 about the soft-tie restraints, the claimant denied he did this. If the claimant shared information, the employer did not establish that he did so.

Since the employer suspended the claimant on October 3, the claimant was put on notice that he could be discharged. Therefore, whether the employer discharged the claimant for a current act of work-connected misconduct is not an issue in this case. The fact the employer waited until a state agency completed its own investigation has no relevance as to whether employer discharged the claimant for work-connected misconduct or not. For unemployment insurance purposes, the employer cannot rely on conclusions a state agency makes because its standard of proof is different than what must be considered in unemployment insurance cases. The administrative law judge did not obtain the results of another agency's investigation for this reason.

Based on the employer's independent investigation, the employer established compelling business reasons for discharging the claimant. While the claimant presented conflicting information during the employer's investigation or what appeared to be conflicting information, he did not place the soft-tie restraints on the doors of residents. On October 2, when he saw the restraints he removed them. The claimant used poor judgment when he did not immediately or even after his shift report seeing the soft-tie restraints on the doors. Since the employer talked to the claimant the next day, this failure in judgment does not constitute a substantial disregard of the employer's interest. The claimant's conduct on October 2 does not constitute work-connected misconduct. Therefore, as of November 29, 2009, the claimant is qualified to receive benefits.

**DECISION:**

The representative's December 16, 2009, decision (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of November 29, 2009, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account will be charged for benefits paid to the claimant.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css