

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LISA D ROSS

Claimant

APPEAL NO. 06A-UI-10643-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HILLCREST FAMILY SERVICES

Employer

**OC: 10-01-06 R: 03
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 23, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on November 15, 2006. The claimant did participate. The employer did participate through (representative) Deb Lang, Administrator, Julie Heiderscheit, Director of Human Resources and Julie Vyverberg, Human Resources Assistant.

ISSUE:

Was the claimant discharged for work related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a technician one full time beginning January 20, 2006 through October 2, 2006 when she was discharged.

The claimant began a romantic relationship with a former resident after the resident left the facility where she worked. She notified the administrator of the relationship in an effort to quell any possible misunderstanding or gossip if they were seen in public together. The administrator notified the Department of Inspections and Appeals when she learned of the relationship so that the state could investigate any possible dependent adult abuse. The Department investigated and found that the relationship between the claimant and the former resident began after the resident left the facility.

When the claimant reported the relationship to the administrator, the administrator told her that until DIA had completed their investigation she was not to be alone in the facility. The claimant contends she was told that she was not to be out of sight of another staff person. The rest of the staff were not all told of the administrator's directive to the claimant.

On September 30, the claimant was instructed to return lunch trays to the kitchen cafeteria. The claimant took the lunch trays down the ramp and into the kitchen where another staff technician was working along with other kitchen workers. During that time period the claimant was in sight of some staff members, was not alone with any resident and was obeying an order from another employee who had the right to direct and control her work. After delivering the trays to the

kitchen, the claimant stopped in the cafeteria and touched the head of another resident in a friendly teasing manner.

When the administrator learned that the claimant had taken the trays to the kitchen by herself, and had touched the head of a resident she was discharged. The claimant had no previous warning for any similar conduct or behavior and had no idea her job was in jeopardy. The claimant was following the orders of another staff person when she took the trays to the kitchen.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not

necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. The claimant was following the orders of another staff person when she returned the trays to the kitchen. The claimant was placed in an untenable position; either refuse to return the trays to the kitchen because she might be out of sight of another staff person, or return the trays and risk not being in sight of another staff person and thus in violation of the administrator's order. The claimant had done nothing wrong to warrant her being placed in a position where she was not to be out of sight of the staff. The claimant came forward to the employer and told them of the relationship, clearly indicating that she had nothing to hide regarding the relationship. Department of Inspections and Appeals found nothing wrong with the claimant's relationship with the former resident. Her obeying the staff member's order to return trays to the kitchen was reasonable under the circumstances, notwithstanding the administrator's order that she not be out of sight of staff members. If the administrator were going to place such a restrictive rule on the claimant, she owed it to the claimant to make sure that she was not given contradicting orders by other staff members.

Regarding the claimant's touching the head of another resident, this conduct was merely an isolated incident of poor judgment and inasmuch as employer had not previously warned claimant about any of the issues leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Benefits are allowed.

DECISION:

The October 23, 2006, reference 01, decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/cs