

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HOWARD STARKWEATHER
Claimant

APPEAL NO. 10A-UI-03576-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

KRYSILIS INC
Employer

**Original Claim: 01-31-10
Claimant: Appellant (1)**

Section 96.5-2-a - Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 24, 2010, reference 03, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 19, 2010. The claimant participated in the hearing. Donna Kluss, Human Resources Coordinator; Jodi Ainger, ICFMR Coordinator QMRP; and Nicole McMurray, Program Assistant, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time direct support staff for Krysilis from September 30, 2005 to February 2, 2010. He was discharged for repeated unacceptable behavior. The final incident occurred January 5, 2010, when the claimant had an inappropriate interaction with a male child. The claimant worked the night shift and was assigned to assist the youth in getting up at 10:00 p.m. and 2:00 a.m. because he is incontinent and soils the bed. The claimant tried to wake the child but he resisted and the claimant should have set a five minute timer for him but instead simply pulled back the comforter. The child grabbed the blanket in defiance and the claimant dragged him by the blanket onto the floor. He then started pulling the child towards the bathroom, but he eventually got up by himself and went into the bathroom. The incident was reported by a co-worker and the employer initiated an investigation and reported the incident to the Department of Human Services (DHS). During the investigation, the claimant was moved to a different location in which he did not work with children. On February 1, 2010, DHS determined the claimant had denied critical care and failed to provide proper supervision but did not place him on the abuse registry. There were at least three other major incidents that occurred prior to the final one. On February 7, 2007, the claimant got up a 15-year old male resident at 5:30 a.m. and asked him to take a shower because he could smell him from where he was sitting. The resident, who was wearing shorts and a t-shirt, refused, so the claimant told him he stunk and opened the sliding glass door to the outside. The incident was not reported until February 13, 2007, and the resident could not recall the exact incident. The claimant was

placed on unpaid suspension due to his inappropriate action and poor judgment. The second incident occurred July 3, 2007, when the claimant pulled a child's legs to get him out from under a foosball table where the child was hiding after behavior problems. The child sustained a rug burn on his chest. The claimant testified the table was very heavy and he did not think the child was safe underneath it. He received a written warning and was retrained on appropriate interactions and how to address behavioral concerns. The third problem occurred on December 5, 2008, when the claimant slapped a 16-year old male child on the back of his head. The claimant insisted he did not slap the child's head and barely even tapped it. The incident was reported to DHS, who found there was insufficient evidence to conclude there was child abuse or neglect. The claimant was allowed to return to work and was retrained on appropriate reactions to behavior problems. On March 1, 2009, the employer retrained all staff due to numerous job performance problems. The staff was taught acceptable behavior in all interactions and was retrained on how to address behavioral concerns.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for job-related misconduct.

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.

The administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

DECISION:

The February 24, 2010, reference 03, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw