

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHANIE M ZEARING
Claimant

APPEAL NO. 09A-UI-00453-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

KRYSILIS INC
Employer

OC: 12-07-08 R: 02
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 9, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on January 27, 2009. The claimant did participate. The employer did participate through (representative) Sarah Shadle, program Services coordinator and Nicholas Ostercamp, House Manager and Deb Terrones, Administrator.

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 direct support staff and medication aide full time beginning January 9, 2007 through December 10, 2008 when she was discharged.

The claimant provided direct care to an individual in a home setting who was physically unable to care for herself. The resident, C.J. was known by the claimant and other workers to leave the house when she was unsupervised. The claimant and others had been previously disciplined when another resident left the house unattended and was missing for approximately 30 minutes. In July of 2008 the claimant was specifically warned that if any other incident occurred where a resident under her care was placed in jeopardy she could be discharged.

The claimant was responsible for caring for C.J. when her coworker Judy asked her to watch the resident she was responsible for caring for while she went to the restroom. The claimant then left C.J. who was in her bedroom changing her clothes alone while she went to the living room to sit on the couch beside R.A. When the claimant left C.J. alone, C.J. left her room and went outside into cold snowy winter weather wearing only a pair of pants. When Judy returned from the bathroom the claimant returned to C.J.'s bedroom and noticed that she was not there. The alarm bell on the door leading outside of the laundry room had been disabled. C.J. was discovered outside on her hands and knees in the snow with a cut on one of her feet wearing only a pair of pants. She had on no shirt or bra. The temperature was around 6 degrees.

The employer was notified and after an investigation was conducted the claimant was discharged for failing to provide adequate care for resident C.J. At the time Judy asked the claimant to cover for her while she went to the restroom, there was at least one other employee the claimant could have asked for help caring for the residents.

REASONING AND CONCLUSIONS OF LAW:

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

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.

The claimant admits that she was responsible for providing care for C.J. The claimant knew that C.J. had a history of leaving the house unattended. C.J. is not physically or mentally able to make a good judgment about going outside in cold snowy weather without appropriate clothing.

The claimant and her coworkers cannot be expected not to take restroom breaks during their shift. The claimant could have chosen to stand in the hallway where she would have been able to see both C.J. and R.A. and able to seek help if either tried to leave the home unattended. The claimant also could have sought help from a third employee who was working the shift. The claimant could have waited until C.J. finished changing her clothes and then taken C.J. and

R.A. into the same room while she let her coworker use the restroom. By leaving C.J. unattended, she placed C.J.'s welfare at risk as is evidenced by C.J. leaving the house half dressed without shoes or socks into a cold snowy day. The claimant had been specifically warned about similar behavior in the past.

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's conduct in December and was similar to the July incident for which she had been previously disciplined. The fact that the claimant's conduct jeopardized the safety of another is a serious matter. The employer had previously warned claimant about the same issue leading to the separation. The employer has met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Substantial misconduct has been established and benefits are denied.

DECISION:

The January 9, 2009, reference 01 decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs