

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LINDA J JOHNSON
Claimant

APPEAL NO: 11A-UI-02417-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICAN BAPTIST HOMES OF MIDWEST
Employer

OC: 05//02/10

Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Linda J. Johnson (claimant) appealed a representative's February 21, 2011 decision (reference 04) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from American Baptist Homes of the Midwest (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 30, 2011. The claimant participated in the hearing. Tobin Garrett appeared on the employer's behalf and presented testimony from one other witness, David Russell. 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:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on March 12, 2009. She worked part time (25 - 30 hours per week) as a consumer support staff in the employer's Ottumwa and Chariton, Iowa program providing services to persons with disabilities. Her last day of work was December 11, 2010. The employer discharged her on December 16, 2010. The stated reason for the discharge was having too many consumer complaints due to her attitude and tone.

On December 11 the claimant was dealing with a dispute between two residents in the home to which she was assigned. She finally told the two consumers they should each go to their rooms, and to one of the consumers who had more difficulties she stated that if he did not get along, he might have to be sent to a group home, something that the consumer much wished to avoid. As a result of these actions, the employer received a consumer complaint about the incident on December 13.

The claimant had been counseled many times regarding her approach and manner of speaking with consumers in the home, which had generated a variety of consumer complaints since about December 2009. In her May 25, 2010 review it was noted that the claimant needed to be more mindful of the consumers' rights and the impact of what and how she said things had on

the consumers. She was given a final warning on November 4, 2010 for performance issues, including her approach to dealing with the consumers. As a result of the further incident on December 11, the employer determined to discharge the claimant.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's failure to modify her approach and tone when dealing with the consumers as indicated on December 11 after prior warnings shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's February 21, 2011 decision (reference 04) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of December 11, 2011. This disqualification continues until the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css