

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

Appeal Number: 05A-UI-07332-DT
OC: 06/12/05 R: 03
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

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STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Marcelene Juniper (claimant) appealed a representative's July 6, 2005 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Maplewood Manor, Inc. (employer). After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on August 3, 2005. This appeal was consolidated for hearing with one related appeal, 05A-UI-07362-DT. The claimant participated in the hearing and was represented Christal Arthur, attorney at law. Denise Hill, attorney at law, appeared on the employer's behalf and presented testimony from one witness, Connie Ferrell. During the hearing, Employer's Exhibits One through Fourteen and Claimant's Exhibits A through F were entered into evidence. 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 August 17, 1989. She worked full time as a housekeeper and nursing assistant at the employer's long-term care nursing facility; 75 percent of her work was in housekeeping. Her last day of work was June 15, 2005. The employer discharged her on that date. The stated reason for the discharge was a number of disciplinary concerns including questioning a decision to move a resident from one room to another, not properly washing a lunch table, and having beverage containers on the housekeeping cart after prior warnings.

On June 13, 2005, the claimant did inquire of her supervisor why a resident had been moved from one room to another, because she was concerned that the new room was too warm for the resident; she was not criticizing the decision, but simply asked why. The employer asserted that the claimant did not properly disinfect lunch tables on June 14, 2005; however, the claimant did follow up with disinfectant that day after the person who observed her wipe off the tables with clothes wet with water had left the lunchroom.

The employer had been giving close scrutiny to the claimant's work performance and frequently had criticized her work. The claimant has a significant sight impairment that has further deteriorated since the fall of 2004 that has affected her ability to see water rings on tables and other marks that she was later criticized for missing. The claimant felt the employer's criticism of her amounted to harassment, and on June 13, 2005 she notified the employer that she felt she was being harassed and would be forced to quit if the problem were not remedied.

The claimant had been given a second-level written warning notice on January 12, 2005 that reprimanded her for having an "open drinking glass on (housekeeping) cart – not allowed," among other issues. (Employer's Exhibit Seven.) On March 9, 2005, she was given a third-level written warning notice; the first item addressed was that she had a "pop can on (housekeeping) cart on 3/8/05 again." (Employer's Exhibit Eight.) On June 11, 2005, the claimant was again found with pop bottles on her cart; her response when confronted was, "I know I'm not supposed to" have them on the cart. Some evidence was presented indicating that at least at some times in the past, there were other people who had beverages on carts; the claimant asserted that they had not been disciplined. Ms. Ferrell, the facility administrator, noted that all persons that she has been made aware of who had drinks on carts have been issued discipline. Drinks on carts are a serious health and safety issue in the facility due to the concerns of infection control.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer discharged the claimant for reasons establishing work-connected misconduct. The issue is not whether the employer was right or even had any other choice but to terminate the claimant's employment, 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 is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). 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 section 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 section 96.5-2-a.

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.

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).

While all of the reasons for which the employer discharged the claimant were not established or do not constitute misconduct, the employer did establish that the claimant was on prior notice that having beverages on the housekeeping cart was not allowed and that if she continued to violate the prohibition, she faced additional discipline including discharge. The claimant has not established that the employer's concern regarding having beverages on the cart is not genuine. The claimant's having beverages on her cart 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 July 6, 2005 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of June 15, 2005. 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.

ld/kjw