

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**STEVEN A TERRELL SR**  
Claimant

**APPEAL NO: 06A-UI-09185-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WESLEY RETIREMENT SERVICES INC**  
Employer

**OC: 08/20/06 R: 02  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Steven A. Terrell, Sr. (claimant) appealed a representative's September 12, 2006 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Wesley Retirement Services, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 27, 2006. The claimant participated in the hearing. Nancy McKasson appeared on the employer's behalf and presented testimony from one other witness, Dee Dolezal. 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 January 9, 2006. He worked full-time as an LPN in the employer's continuing care retirement community. His last day of work was August 21, 2006. The employer discharged him on August 22, 2006. The reason asserted for the discharge was being too angry with a coworker with whom he had difficulties working.

In about June, the claimant had observed a CNA being abusive toward residents and had rebuked her, calling her a "poor excuse for a human being." Since that time, the CNA would argue and confront the claimant when they worked together. On August 14, the CNA accosted him in a hallway and began yelling. The claimant denied yelling at the CNA, but acknowledged that he had called her a "drudgee" and that the scene was inappropriate. He reported the incident to his supervisor, Ms.Dolezal, the director of nursing, on August 15. Ms. Dolezal responded by deciding that the two employees should not work on the same shift, and that they should not even work in the same household area where they might meet between shifts. She instructed the claimant that if the CNA confronted him again, he was not to respond, but was to walk away.

On August 17, the CNA sought out the claimant as he was leaving from work and began yelling at him. He did not respond and walked away. He called and left a message for Ms. Dolezal to report the incident. The next day he learned that Ms. Dolezal was out of the office for a few

days, so he reported the incident to the assistant director of nursing. He told the assistant that if the CNA approached him that way again, he was going to contact the police. The assistant was concerned that the claimant was too angry about the situation, and the employer decided to fire him. The claimant acknowledged that he was upset about the situation, but asserted he spoke to the assistant in a normal manner with no physical or verbal aggressiveness.

### **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). The question is not whether the employer was right 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 matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

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 focus of the definition of misconduct is on acts or omissions by a claimant that “rise to the level of being deliberate, intentional or culpable.” Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer’s interest, such as found in:
  - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
  - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
  - a. Manifest equal culpability, wrongful intent or evil design; or
  - b. Show an intentional and substantial disregard of:
    1. The employer’s interest, or
    2. The employee’s duties and obligations to the employer.

Henry, supra. The reason cited by the employer for discharging the claimant is the problem he had with the CNA, his resulting anger about the continued contact made by the CNA and his “threat” to contact police if the CNA continued accosting him. Based upon the evidence provided, the employer has not met its burden to show that claimant’s actions that led to the loss of his job were misconduct within the meaning of the statute. Cosper, supra. Benefits are allowed, if the claimant is otherwise eligible.

**DECISION:**

The representative’s September 12, 2006 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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