

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JACQUELINE M SMITH
Claimant

APPEAL NO. 09A-UI-07150-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 04/05/09
Claimant: Appellant (1)

Section 96.5-2-a – Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated May 1, 2009, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 24, 2009. Claimant participated. Claimant was represented by Donna Bothwell, attorney at law, who is affiliated with Iowa Legal Aid. Employer participated by Lori Harvey, administrator, and Molly Grundstron, director of nursing. Employer was represented by Jennifer Coe, who is affiliated with TALX. The record consists of the testimony of Lori Harvey; the testimony of Molly Grundstron; the testimony of Frances Murren; the testimony of Jacqueline Smith; and Employer's Exhibits One through Five.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a nursing home and the claimant was employed as a dietary aide and cook. She started working for the employer on August 21, 1995. One of the job duties of the dietary aide was to prepare beverages for the residents, which would include coffee, juice and milk. The dietary aide did not deliver these beverages to the rooms but rather poured individual glasses and put them on a cart in the dining room.

The incident that led to the claimant's termination occurred on March 26, 2009. The residents had been confined to their rooms due to an outbreak of flu. There was a miscommunication between the claimant and the director of nursing over whether the residents were to have juice with their noon meal. The activities director came to the kitchen while the noon meal was being prepared and asked the claimant to prepare juice for the residents. The claimant would not prepare the juice as she did not feel that the activity director had the authority to make this request and because the claimant thought there was to be no juice that day.

The director of nursing then came to the kitchen and asked the claimant to prepare juice for the residents. The concern was that the residents be adequately hydrated while ill with the flu. The claimant would not prepare the juice and then told the director of nursing to "Get the fuck out my face." This led to a more heated exchange and the claimant took a step forward at some point. She then told the director of nursing to "Get the fuck out of my face and out of my kitchen." The residents were never served juice on that day.

The administrator was not in the building when this incident occurred and when informed about it, conducted an investigation. The claimant met with the administrator on March 30, 2009, and following that meeting was terminated for what the employer called a critical A violation.

REASONING AND CONCLUSIONS OF LAW:

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 greater weight of the evidence in this case is that the claimant was discharged for misconduct that disqualifies her from receiving unemployment insurance benefits. The testimony from the witnesses established that the claimant was responsible for preparing beverages for the residents and that on March 26, 2009, she refused to pour juice at the request of the director of nursing. Frances Murren, the cook, testified that the claimant became offensive and loud almost immediately after the director of nursing asked her to prepare juice. There is no dispute that the claimant used profane and vulgar language when speaking with the

director of nursing. In other words, the claimant was insubordinate and used language that was totally inappropriate in the workplace.

The employer in this case was a nursing home and the preparation of juice for residents who were confined to their rooms because of flu was important. Not surprisingly the employer considered the claimant's refusal to pour the juice to be a very serious act of insubordination. The claimant's use of profanity was in a confrontational and disrespectful context, again showing misconduct. The evidence has established misconduct and therefore benefits are denied.

DECISION:

The decision of the representative dated May 1, 2009, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs