

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GEORGENE M BUTLETT
Claimant

APPEAL NO. 10A-UI-11067-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARTIN LUTHER HOME CORPORATION
Employer

OC: 06/27/10
Claimant: Respondent (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed a representative's July 27, 2010 decision (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for non-disqualifying reasons. A telephone hearing was held on September 20, 2010. The claimant participated in the hearing with her attorney, Todd Schmidt. Jason Lehman, attorney at law, represented the employer. Doris Kintzle, James Kurtz, Troy Smith, Tim Ede, Mark Urban, and Al Koppes were present on the employer's behalf. During the hearing, Employer Exhibits One through Eight and Claimant Exhibits C and D were offered and admitted. Claimant Exhibits A and B were offered, but not admitted. 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:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in September 1995. She worked full-time in housekeeping. Since 2005, Urban supervised her. During her employment, the claimant received a copy of the employer's Rules of Conduct. (Employer Exhibit Five.) The rules of conduct inform employees they can be discharged if they refuse to follow reasonable orders or are insubordinate. (Employer Exhibit Five.)

Prior to March 2010, the claimant had not received any written warnings and was considered an excellent employee. (Claimant Exhibits C and D.) On March 15, 2010, the claimant received a written warning and a three-day suspension for doing a resident's laundry while she was working or on the clock. (Employer Exhibit Three.) In addition to the suspension, the employer also transferred the claimant from the apartments to the main nursing home. (Employer Exhibit Four.)

On June 30, 2010, state inspectors were at the employer's facility to do an annual inspection. It was a stressful time for all employees. During the morning of June 30, the employer's CEO

asked Ede to clean a vent in the Memory Care Unit. (Exhibit Seven.) Ede was busy doing other work. When the claimant returned from a break, Ede saw her and asked the claimant to clean a vent in the stairwell. The claimant questioned as to whether this was in her job description. She did not understand what vent Ede asked her to clean. As a result of not understanding where the vent was located, she responded by telling Ede that this was not her job. Even though the claimant told Ede she was not in maintenance, he told her to just do it. As Ede turned to walk away, he made the comment that he sick of this shit. The claimant heard the comment and told Ede, "Kiss my ass." The two then left.

The claimant went to Urban to find out what vent Ede wanted her to clean. After she learned which vent he wanted cleaned, she informed Urban she had cleaned that vent earlier that day. Although Ede knew the claimant had cleaned the vent he talked to her about, he reported the incident to Smith. When Smith investigated the incident and talked to the claimant, she admitted she told Ede to "kiss her ass," but had meant it in a joking manner.

The employer concluded the claimant had been insubordinate to Ede. As a result of violating the employer's rule of conduct—refusal to perform assigned work or insubordination—the employer discharged the claimant on July 2, 2010. (Employer Exhibit 8).

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good-faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

While the facts indicate the claimant's March 15 suspension may not have been warranted, the claimant accepted this warning and suspension. On June 30, Ede was busy trying to make sure everything was done for the state inspection. The parties admit this was a stressful time for all employees. Since Ede was busy doing other maintenance work, his request that the claimant clean a vent was reasonable. While the claimant used poor judgment when she questioned whether this was part of her job because she assumed the vent was not in the area she cleaned, Ede responded in frustration when he indicated that he was sick of this shit. The claimant's response, "kiss my ass," was unprofessional but understandable under the circumstances. The evidence establishes that no one but Ede and the claimant heard these comments. When the claimant returned to her work area, she checked with Urban to find out what vent Ede wanted her to clean and discovered she had already cleaned it.

While the claimant's questioning about whether it was in her job description to clean a certain vent and her response to Ede's unprofessional comment are not condoned, the facts do not establish that the claimant intentionally disregarded the standard of behavior the employer had a right to expect from her. Given the fact the state inspectors were at the facility, the claimant used poor judgment when she initially questioned Ede's directive to clean a vent. Since the claimant's unprofessional comment came in response to Ede's unprofessional comment, the claimant's June 30, 2010 conduct does not rise to the level of work-connected misconduct. Therefore, as of June 27, 2010, the claimant is qualified to receive benefits.

DECISION:

The representative's July 27, 2010 decision (reference 01) is affirmed. The employer discharged the claimant for justifiable business reasons. The claimant's June 30, 2010 conduct does not rise to the level of work-connected misconduct. As of June 27, 2010, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw