

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CARLA D STRAWHACKER
Claimant

APPEAL NO. 06A-UI-11633-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 11/05/06 R: 03
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Carla Strawhacker (claimant) appealed a representative's December 1, 2006 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Care Initiatives (employer) for conduct not in the best interests of the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 19, 2006. The claimant participated personally. The employer was represented by Alyce Smolsky, Employer Representative, and participated by Valerie Lybarger, Administrator, and Shilo Phillips, Coordinator and Assistant Director of Nursing. The employer offered one exhibit, which was marked for identification as Exhibit One. Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on August 23, 1995, as a full-time certified nursing assistant. The claimant signed for receipt of the company handbook on June 30, 2006. The employer issued the claimant a written warning on November 10, 2005, for yelling at a resident in the presence of the resident's family contrary to the employer's policy. On March 28 and April 7, 2006, the employer issued the claimant verbal warnings for failure to follow instructions regarding the ice machine. On June 13, 2006, the employer issued the claimant a written warning for failure to follow instructions and set an alarm on one of the residents.

On November 7, 2006, the Assistant Director of Nursing heard the claimant yell at a resident. The resident wanted her glasses and the claimant was busy. She told the resident in a loud voice that she would get the glasses when she had time. Then the claimant yelled "Jesus Christ". The employer terminated the claimant on November 8, 2006, for failure to follow instruction with regard to treatment of residents.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for misconduct.

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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to conduct themselves in an appropriate and kind manner, treating the residents with civility. The claimant disregarded the employer's right by yelling at a resident after receiving three previous warnings for failure to follow instructions. The claimant's disregard of the employer's interests is misconduct. As such she is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's December 1, 2006 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because she was discharged from work for misconduct. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw