

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

SHARI A TENEYCK
Claimant

APPEAL NO: 18A-UI-12199-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 11/18/18
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 11, 2018, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on January 9, 2019. The claimant participated in the hearing with former housekeeper Amanda Donovan and was represented by Attorney Joanie L. Grife. Amy Castro, Administrator and Jaqueline Jones, Employer Representative, participated in the hearing on behalf of the employer. Employer's Exhibits One through Four were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time housekeeping supervisor for Care Initiatives from April 9, 2015 to November 6, 2018. She was discharged due to poor work performance.

On May 22, 2018, the employer gave the claimant a list of rooms that needed to be deep cleaned (Employer's Exhibit Four). It also provided her with a list of floors that needed to be waxed and told her the dining room needed to be cleaned after each meal (Employer's Exhibit Four). The employer gave the claimant a monthly cleaning schedule to follow (Employer's Exhibit Four).

On October 5, 2018, the employer issued the claimant a performance improvement plan regarding the cleanliness of the rooms and common areas of the facility (Employer's Exhibit One). The claimant was expected to follow and sign off on the deep cleaning schedule made by the administrator each day, which required every room to be deep cleaned once per month; meet with the administrator and discuss the rooms that are going to be stripped and waxed, and keep a record of which rooms have been stripped and waxed and the date done, and supervise her department and make sure it completes tasks and that the

building is clean (Employer's Exhibit Four). The claimant was given 30 days to comply with the performance improvement plan.

On October 18, 2018, the DON asked the claimant when a resident's room was going to be deep cleaned and the claimant responded, "When are you going to get him out of his room?" (Employer's Exhibit Two). On October 22, 2018, the administrator told the claimant that the same resident's room needed to be cleaned but it was not done as of October 24, 2018 (Employer's Exhibit Two). The employer noted the claimant took several personal phone calls on the employer's phone October 22, 2018 (Employer's Exhibit Two). The claimant stated she was deep cleaning rooms down the long hallway October 22, 2018, but the employer found the rooms were not clean as there were scuff marks all over the floors, the windows were dirty and there were spider webs in the rooms (Employer's Exhibit Two). On October 25, 2018, the administrator and maintenance supervisor told the claimant there was a "big yellow spot" on a resident's floor and another resident's floor was extremely dirty (Employer's Exhibit Two). The floors were still dirty October 26, 2018, and the claimant was again told to clean the floors (Employer's Exhibit Two). On October 29, 2018, the spot was cleaned but the rest of the floor was left dirty (Employer's Exhibit Two). On October 29, 2018, the claimant stated she was going to deep clean some rooms and the administrator asked her which ones (Employer's Exhibit Two). The claimant listed six rooms she had left to clean but when the employer checked those rooms she found spider webs, dirty floors, one with a large bug in the middle of it, scuff marks, dusty rooms, and a yellow spot on one of the floors (Employer's Exhibit Two). On October 31, 2018, the claimant stated a room was deep cleaned but when the employer checked it she found spider webs behind the door, dust on the table, dirty closet floors, and a messy bathroom (Employer's Exhibit Two). Other rooms the claimant said would be deep cleaned were found to have spider webs behind the door, dirty and stained privacy curtains, and dirty bathroom floors (Employer's Exhibit Two). The dining room floor was not cleaned October 31, 2018, even though the employer told the claimant multiple times it needed to be cleaned after every meal (Employer's Exhibit Two). On November 1, 2018, the administrator told the claimant that all of the floors down the short hall were dirty and the shower room needed to be cleaned, but at the end of the day none of those floors were cleaned (Employer's Exhibit Two). The administrator left a piece of paper on the bathroom floor to see if the floor would be swept but the paper remained on the floor until November 5, 2018, when the administrator picked it up (Employer's Exhibit Two). The employer told the claimant three times and reminded the claimant another time that the floors and bathroom floors were extremely dirty and needed to be cleaned but the floors were never cleaned (Employer's Exhibit Two).

The employer reviewed the claimant's progress after 30 days and determined the claimant did not follow the schedule for deep cleaning, did not strip and wax the rooms or keep a record of that activity, and did not oversee her department. Consequently, the employer terminated the claimant's employment November 6, 2018.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

While the claimant maintains she deep cleaned the rooms in the facility, she does not explain why the rooms would still contain spider webs, filthy floors and dusty furniture. The employer prepared a deep cleaning room schedule but the claimant failed to follow the schedule or deep clean the rooms on a regular basis. It is not difficult to observe if an area has been cleaned that day or even the day before. These rooms were clearly not cleaned per the employer's schedule.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The December 11, 2018, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn