

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGELA K FORBROOK
Claimant

APPEAL NO. 09A-UI-03980-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KRYSILIS INC
Employer

**OC: 02/15/09
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Krysilis, Inc. filed an appeal from a representative's decision dated March 6, 2009, reference 01, which held that no disqualification would be imposed regarding Angela Forbrook's separation from employment. After due notice was issued, a hearing was held by telephone on April 8, 2009. Ms. Forbrook participated personally. The employer participated by Connie Gremmer, Coordinator of Human Resources, and Denise Holst, Program Coordinator. Exhibits 1 through 13 were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Ms. Forbrook was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Forbrook was employed by Krysilis, Inc. from May 14, 2008 until February 16, 2009. The employer provides services to mentally and developmentally disabled individuals of all ages. Ms. Forbrook worked full time in a group home as part of the direct support staff. She was discharged as a result of an incident that occurred on February 15.

Ms. Forbrook was working with Daniel while he performed chores. He was not wrapping the cord correctly around the vacuum cleaner and Ms. Forbrook attempted to correct him. Daniel was resistant to the instruction and the two argued. Daniel attempted to strike Ms. Forbrook and hit her arm when she put her hand up to block him. When he attempted to strike her a second time, she brushed or swatted his hand away. Daniel's care plan requires him to be placed in restraints if he becomes physically aggressive. There were no eyewitnesses to the February 15 incident. When questioned approximately one hour later, Daniel denied that he had been struck by anyone.

Ms. Forbrook was suspended immediately after supervisors were made aware of the incident. She was notified of her discharge on February 16, 2009. The above matter was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

Ms. Forbrook was discharged from employment. An individual who was discharged is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). For reasons that follow, it is concluded that the employer has failed to satisfy its burden of proof. It is undisputed that Ms. Forbrook did have physical contact with Daniel on February 15. She brushed or swatted his hand away in an attempt to avoid him hitting her a second time.

If Ms. Forbrook had, in fact, slapped Daniel, it seems those individuals who could overhear their verbal exchange would have been able to hear the sound of skin slapping against skin. No one reported hearing a slap. The administrative law judge must give some weight to the fact that Daniel denied he had been slapped when questioned approximately one hour after the incident. For the above reasons, it is concluded that Ms. Forbrook's contact with Daniel on February 15 fell short of being physical abuse.

The administrative law judge concludes that Ms. Forbrook's "knee-jerk" reaction to being struck at constituted no more than an isolated, good-faith error in judgment. It was not intended to harm or punish Daniel, only to avoid him striking her. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated March 6, 2009, reference 01, is hereby affirmed. Ms. Forbrook was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css