

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TANAYA MONTGOMERY
Claimant

APPEAL NO: 11A-UI-02495-E

**ADMINISTRATIVE LAW JUDGE
DECISION**

LISA ETNYRE
Employer

**OC: 01-23-11
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 1, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held in Waterloo, Iowa, before Administrative Law Judge Julie Elder on June 13, 2011. The claimant participated in the hearing. Sandy Ferguson, Program Coordinator Brain Injury, participated in the hearing on behalf of the employer. Employer's Exhibits One and Two 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 CNA for ABCM Corporation from August 31, 2009 to January 26, 2011. On December 26, 2010, the claimant received a written warning for insubordination, inappropriate behavior and attitude December 22, 2010. On that date the claimant was at the nurses' station stating she would not wear the required back brace as part of the employer's uniform policy. When told by a supervisor she had to wear the back brace the claimant said she did not care, was not going to wear the back brace and the employer could write her up (Employer's Exhibit One). The claimant continued arguing about the situation and was written up for her attitude rather than failure to have her back brace on. The warning stated, "Disrespect towards supervision will not be tolerated. Any future behavior of this type will result in immediate termination" (Employer's Exhibit One). The claimant signed the warning (Employer's Exhibit One). On January 25, 2011, the claimant left her resident unattended in the dining room to walk another resident to his room (Employer's Exhibit Two). Another staff member covered the claimant's two residents while she was gone after noticing the residents, who were choking hazards, were left alone (Employer's Exhibit Two). Staff also noticed that one of the claimant's residents who normally ate lunch at 4:30 p.m. was still in the dining room and it was nearly 6:00 p.m. (Employer's Exhibit Two). The claimant was observed in the hallway talking to a housekeeper and the nursing staff paged the claimant to return to the dining room three times but she ignored the pages (Employer's Exhibit Two). A nurse then approached the claimant to ask her to go back to the dining room and the claimant raised her

voice and yelled at the nurse and was asked to stop several times before a second nurse intervened to stop the situation from escalating although the claimant continued yelling at her supervisor throughout the evening (Employer's Exhibit Two). This incident occurred in front of residents. The employer terminated the claimant's employment for disrespect of supervisors effective January 26, 2011.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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 claimant argued and yelled at her supervisor on two separate occasions approximately one month apart. The final event occurred in front of residents, after the claimant was warned about her attitude and behavior and insubordination toward supervisors. Regardless of the situation it was inappropriate and unprofessional for the claimant to repeatedly raise her voice towards supervisors, whether residents are present or not, and her intentional lack of disregard for the authority of her supervisors, constitutes disqualifying job misconduct. Consequently, 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 March 1, 2011, 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

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