

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

ELIZABETH M TODD
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COLONIAL MANOR OF ELMA INC
407 – 9TH STREET
ELMA IA 50628-8217

Appeal Number: 04A-UI-00522-BT
OC: 12/07/03 R: 02
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32 (9) – Suspension/Disciplinary Layoff
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Colonial Manor of Elma, Inc. (employer) appealed an unemployment insurance decision dated January 12, 2004, reference 01, which held that Elizabeth Todd (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 4, 2004. The claimant participated in the hearing. The employer participated through Deb Vondersitt, Administrator. Employer's Exhibit One was admitted into evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired as a full-time licensed practical nurse and has been working since November 19, 1990. The claimant was suspended on December 10, 12 and 15, 2003 for repeated inappropriate behavior and insubordination. She received a written warning on August 5, 2003 for arguing with residents and their families and complaining about her duties. The claimant refused to sign the disciplinary warning. On December 9, 2003, the claimant told a resident's family member that she was going to leave shortly and to talk to another nurse. The supervisor questioned her about it and she admitted she was going to leave and told the supervisor that she was not going to "live a lie." The supervisor directed the claimant to go to her office but the claimant refused and did her charting instead. The claimant thought the supervisor was rude in the way she said the directive and believed the supervisor should not be yelling at her. The claimant later refused to sign the disciplinary warning from this incident also.

The claimant filed a claim for unemployment insurance benefits effective December 7, 2003 and she has received benefits after the separation from employment in the amount of \$250.00.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined in this matter is whether the claimant's disciplinary suspension was for any disqualifying reason. When an individual is unemployed as a result of a disciplinary suspension imposed by the employer, the individual is considered to have been discharged and the issue of misconduct must be resolved. See 871 IAC 24.32(9). An individual who was discharged or suspended for misconduct is disqualified from receiving job insurance benefits. See Iowa Code Section 96.5-2-a. 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. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant was suspended for repeated unprofessional behavior and insubordination. She denies that she was insubordinate on December 9, 2003, but unequivocally admits she refused to follow the employer's directive. The claimant had no legitimate reason to ignore the employer's directive. It was not an unreasonable request and it would not have placed the claimant in danger if she had followed it. She simply did not like the manner in which it was issued. The claimant's manner during the hearing, her past argumentative behavior as noted by the disciplinary warning, and her comments to both the family member and her supervisor on December 9, 2003, demonstrate a pattern of inappropriate and argumentative behavior. Additionally, the claimant twice refused to sign the disciplinary warnings, which is further evidence of insubordination. The failure to acknowledge the receipt of a written reprimand by signing it constitutes job misconduct as a matter of law. Green v. IDJS, 299 N.W.2d 651 (Iowa 1980). The employer has met its burden. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated January 12, 2004, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits because she was suspended from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$250.00.

sdb/b