

**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**

**KARA L PENNING
PO BOX 283
REMSSEN IA 51050**

**GOOD SAMARITAN SOCEITY INC
C/O TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 04A-UI-03891-DWT
OC 02/29/04 R 01
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 are 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
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Good Samaritan Society, Inc. (employer) appealed a representative's March 23, 2004 decision (reference 01) that concluded Kara L. Penning (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 28, 2004. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which she could be contacted to participate in the hearing. As a result, no one represented the claimant. Julie Fedders, the director of nursing, testified at the hearing and Lesa Deboer and Mary Toel were available to testify. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on November 12, 2002. She worked as a part-time, certified nursing assistant. Fedders was her supervisor.

During her shift the evening of February 27, the claimant and other aides left a resident in the dining room for seven hours. Before the claimant left work, her job required her to do rounds to make sure all the residents were accounted and cared for. The claimant left work at 10:15 pm. on February 27. On Monday, March 1, Fedders learned about the unattended resident during the claimant's shift. In investigating this incident Fedders called the claimant. The claimant told Fedders she had completed her rounds before she left work on February 27. Fedders talked to two other aides that worked with the claimant during her shift. Fedders heard three different stories as to what happened on February 27.

Fedders talked to the claimant later in the afternoon on March 1. During this conversation, the claimant admitted she had not completed her rounds when she left work on February 27, 2004. The claimant had received previous written warnings for various problems during her employment. Even if the claimant had not received previous warnings, she would have been discharged on March 1, 2004. The employer discharged the claimant because she was not initially truthful when she told Fedders she had completed her rounds before she went home on February 27. Only after Fedders talked to the claimant a second time because Fedders received three different stories about the February 27 incident did the claimant admit she had not completed her rounds before she went home.

The claimant established a claim for unemployment insurance benefits during the week of February 29, 2004. She filed claims for the weeks ending March 6 through April 10, 2004. She received her maximum weekly benefit amount of \$250.00 each week she filed a claim.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The morning of March 1, when Fedders first talked to the claimant, she made the decision to cover up the fact did not complete her rounds before she left work on February 27, 2004. Instead of being truthful, the claimant told Fedders she completed her rounds before she left work. If the claimant had completed her rounds or finished her job duties before she left work, she would have noticed a resident had been left in the dining room. Even though the claimant

later admitted she did not complete her rounds, the employer has a right to expect an employee will be truthful at all times. The claimant committed work-connected misconduct when she chose to be less than honest about what she did or did not do before she left work on February 27, 2004. Since the employer discharged the claimant for disqualifying reasons, the claimant is not qualified to receive unemployment insurance benefits as of February 29, 2004.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code §96.3-7. The claimant is not legally entitled to receive unemployment insurance benefits during the weeks ending March 6 through April 10, 2004. She has been overpaid a total of \$1,500.00 in benefits she received for these weeks.

DECISION:

The representative's March 23, 2004 decision (reference 01) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of February 29, 2004. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive unemployment insurance benefits during the weeks ending March 6 through April 10, 2004. She has been overpaid a total of \$1,500.00 in benefits she received for these weeks.

dlw/kjf