

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PHYLLIS J SUMMERS**  
Claimant

**APPEAL NO. 08A-UI-03182-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**OC: 03/02/08 R: 03  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The employer filed an appeal from a decision of a representative dated March 25, 2008, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice was issued, a telephone conference hearing was scheduled for and held on April 15, 2008. The claimant participated personally. Participating on behalf of the claimant was Michelle Swanstrom, Attorney, Legal Aid Society. The employer participated by Lynn Corbiel, Attorney, Johnson & Associates, and witnesses Jaci Garden and Tabitha Hole. Exhibits One through Seven were received into evidence.

**ISSUE:**

The issue in this matter is whether the claimant was discharged for intentional disqualifying misconduct in connection with her work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant worked for this employer from November 1, 1999, until March 1, 2008, when she was discharged from her full-time position as a certified nursing assistant. The claimant's immediate supervisor was Tabitha Hole.

The claimant was discharged when she was required by circumstances to lower a patient to the floor on February 27, 2008. On that day, the claimant was summoned to a resident's room by a bathroom light and found the female resident partially on the toilet. The patient had attempted to go to the toilet by herself to demonstrate her competence, but had been unable to return to bed. Because Ms. Summers was afraid that the resident would completely fall off the toilet if the claimant left, she assisted the patient carefully to the floor to avoid any potential injuries. Prior to doing so, the claimant had "yelled for help" but had received no response, and paging devices would not reach staff members in different areas. Ms. Summers concluded that engaging the bathroom assistance light would also do no good, due to the limited staffing available.

Because the claimant had been previously warned for similar conduct in March of 2007 and May of 2007, a decision was made to terminate Ms. Summers from her employment. The employer believed that the claimant had intentionally attempted to assist the resident alone although the resident had been listed on the company's resident status sheet as needing the assistance of two assistants.

#### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence establishes intentional disqualifying misconduct on the part of the claimant or negligence of such a recurrence or magnitude so as to show equal culpability under the provisions of the Iowa Employment Security Act. It does not.

The evidence in the record establishes that the employer made a management decision to terminate Ms. Summers when they believed that the claimant had on three occasions violated company policy by attempting to assist a resident without proper help. The facility lists the names of residents who need assistance on a status sheet and employees are expected to be aware of the number of assistants required and to follow the number mandated. On two occasions in the past, the claimant, due to circumstances, believed that it was prudent to attempt to assist residents by herself and had been warned by Care Initiatives.

On the day in question, the claimant did not have the benefit of the patient's care plan, although a status sheet listed the resident as needing the assistance of two workers. Ms. Summer expectedly was summoned to the resident's room by a bathroom paging light and found the resident in need of immediate assistance. The claimant attempted to summon assistance by yelling for help, to no avail, and company pagers were ineffective. The claimant reasonably concluded that re-turning on the bathroom light would be to no avail, as the facility staff were busy with other residents. Ms. Summers assisted the patient to the floor rather than risk the real danger that the resident might slip the rest of the way off the toilet and seriously injure herself. The administrative law judge concludes, based upon the totality of the evidence in the record, that the claimant's conduct, at worst, was an instance of poor judgment that did not arise to the level of intentional disqualifying misconduct. Based upon the circumstances, the claimant concluded that she should offer immediate assistance to the resident and did so to prevent further injury.

The question before the administrative law judge is not whether the employer has a right to discharge an employee for this reason, but whether the discharge is disqualifying under the provisions of the Iowa Employment Security Act. Although the decision to terminate Ms. Summers may have been a sound decision from a management viewpoint, for the above-stated reasons, the administrative law judge concludes that intentional disqualifying misconduct has not been shown. The claimant attempted to perform her duties to the best of her abilities but did not meet the employer's expectations.

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.

For the reasons stated herein, the administrative law judge concludes that the claimant's discharge took place under non-disqualifying conditions. Benefits are allowed if the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated March 25, 2008, reference 01, is hereby affirmed. The claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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