

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

KAREN BUTLER
111 E 7TH ST
MUSCATINE IA 52761

K & G INVESTMENTS INC
2002 CEDAR ST
MUSCATINE IA 52761

Appeal Number: 05A-UI-12042-DWT
OC: 11/06/05 R: 04
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Karen Butler (claimant) appealed November 22, 2005 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of K & G Investments, Inc. (employer) would not be charged because the claimant had been discharged for work-connected misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 15, 2005. The claimant participated in the hearing. Carlene Sells, the activity director; Heather Plate, the director of nursing; and Karen Hogan appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer on December 15, 1995. The claimant worked as a full-time certified nursing assistant. The claimant knew the employer's rules did not allow any residents to be left alone in the shower room.

On November 4, 2005, the claimant took a resident, who had her hip removed, into the shower room for a shower. The claimant did not have everything she needed for the shower. The claimant turned on the call light, but no one came to answer the light. The claimant was in a hurry and left the resident alone in the shower room. As Sells walked down the hall, she heard the resident calling from the shower room. Sells stayed with the resident until the claimant returned about ten minutes later.

The employer discharged the claimant for leaving the resident in the shower room alone. The employer considered this resident a high risk for falling because she did not have a hip.

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 claimant knew and understood the employer's policy did not allow any resident to be alone in the shower room. Although the claimant did not intend to harm any resident, she made the decision to leave the resident alone in the shower room in violation of the employer's policy. In this particular case, leaving a resident alone in the shower room for more than ten minutes when the resident is a high risk for falling amounts to an intentional and substantial disregard of the employer's interests. The employer discharged the claimant for reasons constituting work-connected misconduct. As of November 6, 2005, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's November 22, 2005 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of November 6, 2005. 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.

dlw/kjw