

**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**

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**Appeal Number: 05A-UI-08574-E
OC: 07-17-05 R: 03
Claimant: Appellant (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/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 10, 2005, 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 October 4, 2005. The claimant participated in the hearing with Melanie Lacey, CNA/Medication Aide, and was represented by Attorney Natalie Burris. The employer participated in the hearing with Shelleen Hatch, Director of Human Resources; Lisa Sackett, DON/Lead Resident Care Advisor; Patty Schmidt, Assistant DON/Assistant Lead Care Advisor; and Mary Wilson, resident's daughter, and was represented by Attorney Jeffrey Ewoldt. Employer's Exhibits One through Seven and Nine through 11 and Claimant's Exhibits A through G were admitted into evidence.

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 LPN/Charge Nurse for Cedar Falls Lutheran Home for the Aged from January 29, 2004 to August 2, 2005. The claimant was working in the "wander prevention unit," a locked unit housing residents with dementia and Alzheimer's disease. On July 12, 2005, resident M.S. was yelling and screaming throughout the day and although various staff members had attempted to intervene to calm her they did not have continuing, sustained success. As other residents and their family members gathered to watch a music therapy video after dinner, M.S. was disrupting other residents and their family members with her constant yelling and screaming. The music therapist asked M.S. to stop screaming because she was bothering other residents. Some residents left the area while others yelled back at M.S. and CNA Emily Marienau believed there was a possibility that another resident would harm M.S. if she was not removed from the area because she thought the residents were the most upset with M.S. that they had ever been. After the claimant also told M.S. she needed to be quiet or they would have to leave the area M.S. continued to yell and the claimant rolled M.S. to her room but her roommate was in the room getting ready for bed, and because M.S. was still yelling, the claimant left her wheelchair in front of the nurses' station. Other residents were sitting by the nurses' station eating cookies and ice cream and they soon became agitated with M.S.'s continued yelling as well so the claimant took M.S. down the hall to an empty room, recently vacated by a resident. She opened the curtains and asked M.S. if she wanted her doll, Dylan, a technique often used to help calm M.S. The claimant saw CNA/Medication Aide Melanie Lacey in the hall returning from her break and asked if she could do a one-on-one session with M.S. Ms. Lacey stated she would try to do so but needed to start getting the other residents ready for bed before she could come back. M.S. had started to calm down while the claimant talked to her and she was holding the baby so the claimant left the top half of the door open and started walking down the hall to check on the other residents. As she was walking down the hall, M.S.'s daughter, Mary Wilson, was walking up the hall. Ms. Wilson testified she thought she could hear someone yelling and then determined it was her mother but did not find her in her room and asked the claimant where she was. The claimant stated she had taken her down the hall because she was yelling and Ms. Wilson said she believed her mother became more upset and yelled more when she was left alone. The claimant told Ms. Wilson that her mother had been yelling at music therapy and subsequently was moved to a different room. Ms. Wilson believed her mother looked scared in the room but calmed when she saw her daughter. Ms. Wilson asked her mother if she knew she had been yelling and M.S. said "no." M.S. asked if she had done something wrong and was assured she had not. Ms. Wilson took M.S. to the dining room for about 30 minutes before taking her back to her regular room. After Ms. Wilson left the facility she called around 9:45 p.m. to see how her mother was doing. The claimant answered and said M.S. was better and the radio they left on in her room was having a calming effect. The claimant testified that Ms. Wilson did not appear to be upset about the situation but did ask when the next care conference was. The claimant indicated she did not know but checked and told Ms. Wilson the last care conference was held in April and another should be coming up. The claimant asked another nurse to call the second shift nurse to find out the date of the next scheduled care conference and also gave Ms. Wilson the number of Patty Schmidt, Assistant DON/Assistant Lead Care Advisor. Ms. Wilson called Ms. Schmidt but received her voice mail and Ms. Schmidt returned her call the next day. She asked Ms. Schmidt when the next care conference was so they could discuss her mother's yelling and also mentioned finding her mother in the unoccupied room when she arrived the previous evening and Ms. Schmidt indicated she would investigate the situation. After reporting the situation to the administration, Ms. Schmidt went to the unit and did a "mini in-service" about

what is acceptable in dealing with residents and the claimant expressed surprise that it was not okay to leave a resident in a room with the top half of the door open. The employer began an investigation, took the claimant off the schedule and notified DIA of the incident. On July 18, 2005, the employer met with the claimant and the chief union steward. The claimant stated she was not trying to punish the resident but was trying to protect her and calm her, as well as the other residents. She did not believe she had done anything inappropriate. The employer met with the claimant again July 19, 2005, and gave her the option of resigning or being terminated and the claimant chose to resign so she could receive her vacation pay. On September 7, 2005, DIA determined the abuse report of unreasonable confinement and unreasonable punishment was unfounded.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 employer has the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). 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). While the claimant's method in dealing with M.S. may be debatable, M.S.'s constant yelling and screaming was disruptive and agitating the other residents and she made a judgment call on how best to handle the situation. Although the employer considered her comment to M.S. in music therapy to be a threat, the music therapist asked M.S. to keep her voice down and a resident's family member observed the claimant speaking quietly to M.S. before quietly wheeling her down the hall. The family member described the claimant's actions with M.S. as quiet and patient and stated her actions did not seem to upset M.S. Under these circumstances, the administrative law judge cannot conclude that the claimant threatened M.S. during music therapy. The music therapist had asked M.S. to be quiet; other residents had asked her to be quiet, and some residents appeared to be on the verge of physically attacking her before the claimant took her out of the room. The claimant next sat M.S. outside the nurses' station where several other residents were enjoying cookies and ice cream but M.S. was also loud and disruptive in that location and the claimant then wheeled her to the unoccupied room where she stayed with her, opened the curtains, and gave her "baby" Dylan. After M.S. calmed down the claimant left to check on other patients. While the employer considered her actions to be unacceptable isolation and restraint, again the administrative law judge respectfully disagrees. The claimant did not simply wheel the resident down to the unoccupied room, leave and close the door but rather stayed in there with her, opening the curtains, talking with her and giving her "baby" Dylan until she had calmed down. When she did leave, she left the top half of the door open and M.S. was in the room a very short period of time before her daughter arrived. The claimant put M.S. in a place where she would not disrupt other residents and could be safe from other residents as well. While the administrative law judge applauds the employer's commitment to its residents, in this case it appears an employee made a reasonable judgment call, with no intent of harming M.S. Consequently, the administrative law judge concludes the claimant's actions do not rise to the level of disqualifying job misconduct as defined by Iowa law. Benefits are allowed.

DECISION:

The August 10, 2005, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

je/pjs