

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID J WILSON

Claimant

**LUTHER CARE SERVICES
TRINITY CENTER AT LUTHER PARK**

Employer

APPEAL NO: 10A-UI-16837-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/03/10

Claimant: Respondent (1)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The employer appealed a department decision dated November 30, 2010, reference 01, that held the claimant was not discharged for misconduct on October 5, 2010, and benefits are allowed. A telephone hearing was held on January 24, 2011. The claimant did not participate. Dot Donaldson, Nursing Director, participated for the employer. Employer Exhibit 1 was received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witness, and having considered the evidence in the record, finds: The claimant began employment on December 23, 2008, and last worked for the employer as a full-time C.N.A. on October 5, 2010. The claimant received the employer policy that provides he might be discharged without warning for resident abuse.

The employer nursing director investigated an employee complaint against the claimant for resident abuse on September 30, 2010. While the employer director concluded claimant had not committed resident abuse, she did find he was unkind to residents and used an inappropriate demeanor in dealing with them. The employer did report this conduct as abuse to the Department of Inspections and Appeals. The employer discharged the claimant on October 5 for inappropriate conduct with residents.

The claimant was not available when called for the hearing.

REASONING AND CONCLUSIONS OF LAW:

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.

The administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on October 5, 2010.

The employer acknowledges the claimant's conduct was resident abuse that would justify an immediate discharge without warning. While the claimant's conduct was not satisfactory, it does not merit disqualifying misconduct absent any prior warnings.

DECISION:

The department decision dated November 30, 2010, reference 01, is affirmed. The claimant was not discharged for misconduct on October 5, 2010. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css