

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

CLARA G PRICE
218 N OLIVE ST
MAQUOKETA IA 52060

COMMUNITY CARE INC
1611 – 330TH AVE
CHARLOTTE IA 52731-9682

Appeal Number: 04A-UI-12390-HT
OC: 10/24/04 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:

The claimant, Clara Price, filed an appeal from a decision dated November 16, 2004, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on December 13, 2004. The claimant participated on her own behalf. The employer, Community Care, participated by Director of Human Resources Bill Rose.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Clara Price was employed by Community Care from

August 27, 2001 until August 5, 2004. She was a full-time rehab associate working in a residential facility for mentally handicapped and mentally ill adults. On March 30 and 31, 2004, she received written warnings for leaving a resident in time-out without proper supervision, and for speaking rudely to residents and not allowing them to leave their rooms. The warnings notified her that any further incidents would result in disciplinary action up to and including discharge.

On August 4, 2004, the claimant was carrying medications when a resident struck her on the arm, causing her to spill the meds. As she bent down to pick them up he struck her again. She was startled and threw juice on him. The incident was reported by another staff members and investigated by Director Denise Beenk. It was determined the claimant had violated the standards of care for clients set down by the company as well as the applicable state law. She was discharged by Ms. Beenk on August 5, 2004.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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 claimant had been advised her job was in jeopardy as a result of her inappropriate interaction with residents. She has acknowledged that she threw something on one of the residents after being struck twice by him. The administrative law judge can understand how this would be frustrating and irritating, but when dealing with this type of resident, such acting out behaviors are to be expected. Her conduct violating laws and rules governing the care of these dependent adults and violated the employer's obligation to provide appropriate treatment for them. This is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of November 16, 2004, reference 01, is affirmed. Clara Price is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

bgh/pjs