

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KELCEY A PAUL**  
Claimant

**APPEAL NO. 09A-UI-02645-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GOOD SAMARITAN SOCIETY INC**  
Employer

**OC: 01/04/09**  
**Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Good Samaritan Society, Inc. filed an appeal from a representative's decision dated February 16, 2009, reference 01, which held that no disqualification would be imposed regarding Kelcey Paul's separation from employment. After due notice was issued, a hearing was held by telephone on March 16, 2009. Ms. Paul participated personally. The employer participated by Fred Metcalf, Human Resources Associate. Exhibits One through Six were admitted on the employer's behalf.

**ISSUE:**

At issue in this matter is whether Ms. Paul was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Paul was employed by Good Samaritan Society, Inc. from April 23, 2007 until January 7, 2009 as a full-time certified nursing assistant. She was discharged from the employment after receiving a series of warnings.

Ms. Paul received a written warning on August 27, 2008 because she and a coworker failed to put up all four side rails on a resident's bed. As a result, the resident fell out of bed and suffered a broken leg. Ms. Paul had recently returned to work following military basic training and was not aware the resident required bed rails. The information was not updated on the resident's care plan. Ms. Paul received a written warning on September 16, 2008 because she was using her cell phone to send text messages while on duty in violation of the employer's work rules. She did so because she had just been informed of her father's arrest. The warning of September 16 also addressed the failure to perform required cares for residents.

On December 17, 2008, Ms. Paul was placed on a "Performance Improvement Plan." The plan cited her failure to be in the assisted dining room timely and on a consistent basis. The plan also cited "inappropriate conduct" but the employer was unable to identify what the specific conduct was. The decision to discharge was prompted by a complaint that Ms. Paul refused to

allow a resident to wear the bed clothes of her choice. The resident told the employer that Ms. Paul refused to allow her wear the pajamas she wanted to wear rather than the gown Ms. Paul put on her. Ms. Paul had allowed the resident to choose the gown she wanted to wear and was not told by the resident that she wanted to wear something different. Ms. Paul was notified of her discharge on January 7, 2009.

**REASONING AND CONCLUSIONS OF LAW:**

Ms. Paul was discharged from employment. An individual who was discharged is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer's burden included establishing that there was a current act of misconduct. 871 IAC 24.32(8).

In the case at hand, Ms. Paul's discharge was prompted by a complaint that she refused to allow a resident to wear pajamas rather than a gown. Although there was another employee in the room when the incident was alleged to have occurred, that individual was not offered by the employer as a witness. Nor did the employer provide a statement from this individual or from the resident involved. Ms. Paul was credible in her testimony regarding her interaction with the resident concerning what she wanted to wear to bed. The employer failed to establish that there was an act of misconduct on January 6, 2009.

The next most prior disciplinary action was on December 17 when Ms. Paul was placed on a "Performance Improvement Plan." Conduct that occurred on or about December 17 would not constitute a current act in relation to the January 7 discharge date. Because the employer failed to establish a current act of misconduct, no disqualification may be imposed.

**DECISION:**

The representative's decision dated February 16, 2009, reference 01, is hereby affirmed. Ms. Paul was discharged but a current act of misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/css