

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RIKKI FRANCK**  
Claimant

**APPEAL NO: 08A-UI-01918-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**COTTAGE GROVE PLACE**  
Employer

**OC: 09/02/07 R: 03  
Claimant: Appellant (1)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

**STATEMENT OF THE CASE:**

Rikki Franck (claimant) appealed an unemployment insurance decision dated February 14, 2008, reference 04, which held that she was not eligible for unemployment insurance benefits because she was discharged from Cottage Grove Place (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 12, 2008. The claimant participated in the hearing. The employer participated through Tom Knoetke, Director; Cheryl Hennings, Director of Nursing; Cindy Hawkins, Human Resources Director; and Anita Simpkins, Assistant Director of Nursing. 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:**

The issue is whether the employer discharged the claimant for work-related misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time certified nurse's assistant and an oral med technician from September 25, 2007 through January 29, 2008 when she was discharged. She was given a verbal warning on October 12, 2008 for failing to work with another employee and creating a disruption at work. The claimant received a written warning on October 24, 2007 when she left a resident alone without an alarm per the resident's care plan and the resident fell and injured herself. She signed the warning but denied responsibility. On January 19, 2008 the claimant went to the nurses' station to ask the med nurse to do an assessment. The nurse in charge told the claimant she does her own assessments and since she is in charge, the claimant needed to come to her. The claimant responded that, "I didn't know you were in charge." On January 20, 2008 a resident had a bloody discharge and the claimant examined her and said she thought it was hemorrhoids. The claimant never advised the charge nurse of what she observed but another aide went to the nurse and reported what the claimant said.

The claimant was discharged on January 23, 2008 since she had just been warned the day before about a similar incident. She disagreed with the decision to discharge her and emailed the director a grievance on January 24, 2008. The director contacted the claimant on January 25, 2008 and stated the matter was being reviewed. The employer conducted a further investigation and learned that several residents were afraid of the claimant. A co-employee heard the claimant interact with a resident on January 20, 2008. The resident said, "you're all out to get me" and the claimant responded by stating, "we're not out to get you, it's the devil that's out to get you." Another resident was asked about the caregivers and she said, "I like all of them. I mean that but Rikki, I'm scared of her, she just isn't nice." A third resident reported that the claimant was "very rough, just terrible, never smiles, never talks and doesn't treat you like a person." After the investigation, the director called the claimant on January 28, 2008 and asked her to come in for a meeting on January 29, 2008. The employer discussed its findings with the claimant on January 29, 2008. She denied all wrongdoing and put the blame on others. The employer discharged the claimant at that time.

### **REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

Iowa Code § 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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for repeated inappropriate behavior. Although she denies doing anything wrong, the employer's evidence is more persuasive. The claimant's conduct shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

**DECISION:**

The unemployment insurance decision dated February 14, 2008, reference 04, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs