

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TAMRA R FAULKNER
Claimant

APPEAL NO: 11A-UI-16198-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAYLAND MENNONITE HOME ASSOC
Employer

OC: 11/06/11

Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Tamra R. Faulkner (claimant) appealed a representative's December 13, 2011 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Wayland Mennonite Home Association (employer). After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was convened on January 13, 2012, and was reconvened and concluded on January 18, 2012. The claimant participated in the hearing and was represented by Nicholas Pothitakis, attorney at law. Kay Overton appeared on the employer's behalf and presented testimony from three other witnesses: John Benedict, Kate Benedict, and Debra McGuire. 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:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Affirmed. Benefits denied.

FINDINGS OF FACT:

The claimant started working for the employer on August 13, 2009. She worked full-time as a certified nursing aide (CNA) at the employer's long-term care nursing facility. Her last day of work was October 27, 2011. The employer suspended her on that date and discharged her on October 31, 2011. The stated reason for the discharge was failing to intervene twice in situations that placed a resident in jeopardy.

On both October 24 and October 25, the claimant was working a 2:00 p.m. to 9:00 p.m. shift. She was on light-duty restrictions, which required her to assist with feedings, respond to call buttons, and answer the phones. As a result, she was frequently stationed at the front desk. On both October 24 and October 25, about mid-afternoon both days, a resident who had a propensity to try to walk out of the facility walked out of the front door, setting off the door alarms. The employer's policy is that when the door alarm goes off, every staff person who is not otherwise providing some critical care to another resident is to go to the door to seek to bring the resident back inside. On both October 24

and October 25, the claimant had been at the front desk when the resident went out the door but failed to attempt to go after the resident or assist in seeking to persuade the resident to come back inside. Rather, she went the other way down the hall and made a remark that it was the nurse's job to retrieve the resident. Because of the claimant's indifference to the resident's potential jeopardy and her deliberate failure to act on two occasions, the employer discharged the claimant.

REASONING AND CONCLUSIONS OF LAW:

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. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's deliberate failure to attempt to protect the resident from jeopardy on two occasions 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. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's December 13, 2011 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of October 31, 2011. This disqualification continues until the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw