

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

ROBERT BOATRIGHT JR
600 ALLISON ST
CHARLES CITY IA 50616

CHAUTAUQUA GUEST HOME
302 – 9TH ST
CHARLES CITY IA 50616

Appeal Number: 06A-UI-01060-DWT
OC: 01/01/06 R: 02
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:

Robert Boatright, Jr. (claimant) appealed a representative's January 25, 2006 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Chautauqua Guest Home (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 14, 2006. The claimant participated in the hearing. Susan Ayers, the administrator, and Misty Hobert, the director of nursing, appeared on the employer's behalf. 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:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on April 7, 2003. The claimant worked as a full-time certified nurse's aide. The employer's progressive discipline informs employees they will receive a verbal warning, a written warning, a suspension and then will be discharged if there are repeated problems or violations of resident care guidelines.

During his employment, the claimant most recently received verbal warnings for failure to provide proper resident care on February 8, May 5 and June 6, 2005. On August 5, the claimant received a written warning for disrespectful treatment of a resident. On August 9 a resident complained that the claimant did not provide the care the resident requested. The employer gave the claimant a three-day suspension for this complaint.

On July 21, the employer talked to the claimant about a complaint the employer received from an employee concerning sexual comments the claimant made to the employee. The employer gave the claimant a copy of the employer's sexual harassment policy.

On December 19, 2005, an employee reported the claimant was harassing her. The employer began a preliminary investigation and decided there was enough information to suspend the claimant until the employer completed the investigation. The employer suspended the claimant on December 29, 2005.

On December 31, 2005, the employer received a report from various employees that at the end of the claimant's shift and the beginning of third shift on December 27, 2005, the claimant restrained a resident without any doctor's orders or authorization from a charge nurse. The claimant acknowledged he restrained a resident at the end of his shift because the resident was wandering off. The claimant did not see anything wrong with placing a restraint on the resident. The claimant believed third-shift employees had previously restrained the resident and the claimant's charge nurses knew the claimant had done this and did not tell the claimant he could not do this.

After receiving the December 31 report, another example of failing to provide or following resident care guidelines, the employer decided to discharge the claimant. The employer did not complete the harassment investigation. On January 6, 2006, the employer discharged the claimant.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

Since the claimant had received several warnings and was suspended for failing to provide proper resident care, the claimant knew or should have known his job was in jeopardy if he again failed to follow this policy. The claimant understood residents could only be restrained if a doctor ordered the restraint or a charge nurse directed an employee to restrain a resident. The facts indicate the resident was wandering off and hard to keep track of the evening of December 27. In an attempt to keep track of the resident right before a shift change and during a shift change, the claimant restrained the resident in a wheel chair. Even though the claimant asserted he received permission from a charge nurse to restrain the resident, without the charge nurse's testimony this assertion is not supported by the facts. Based on the fact the claimant's job was in jeopardy for failing to provide or follow proper resident care, the claimant's decision to restrain a resident when he had not been told to restrain the resident shows a pattern of failing to follow the employer's rules by following resident care guidelines. The employer established that the claimant committed a current act of work-connected misconduct. As of January 1, 2006, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representatives' January 25, 2006 decision (reference 01) is affirmed. The employer discharged the claimant for a current act of work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of January 1, 2006. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

dlw/s