

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DIANA J STERRETT
Claimant

APPEAL NO: 13A-UI-03523-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CARE INITIATIVES
RIDGEWOOD NURSING & REHAB CTR**
Employer

OC: 02/24/13
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Diana Sterrett (claimant) appealed an unemployment insurance decision dated March 18, 2013, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Care Initiatives (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 25, 2013. The claimant participated in the hearing. The employer participated through Linda Grinstead, Director of Nursing; Brandon Kranovich, Administrator; Linda Houk, Registered Nurse; and Alyce Smolsky, Employer Representative. Employer's Exhibits One through Four were admitted into evidence. 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 claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

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 aide from May 30, 2001 through February 25, 2013 when she was discharged for insubordination and refusal to follow directives. She had previously received four verbal warnings, one final warning with a suspension and a final warning. The most recent final warning was issued on January 8, 2013 when the claimant told a resident, "Well, if you didn't shit yourself, I wouldn't have to keep doing this!" She admitted using profanity and signed the warning.

On February 19, 2013, she was dealing with a resident's overnight restroom needs when she yelled down the hallway to another CNA, "How many times is this?" On February 20, 2013, the claimant was rude and abrupt to the business office manager when she refused to sign the paperwork for an upcoming leave of absence. On February 22, 2013 the claimant refused to provide documentation regarding a resident's bowel movements even though that was part of

her duties. She argued with the charge nurse and walked away from her when the nurse was issuing directives. The claimant also refused to deliver pitchers of water to the residents on a particular hall because the other aide was reportedly on his computer and she did not think it was fair since the other aide was not working.

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 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.

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged for insubordination and a repeated failure to follow directives. Repeated failure to follow an employer's instructions in the performance of duties is misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The claimant had multiple warnings and she repeatedly failed to provide kind and considerate care to the residents for whom she was providing care. She denies all wrongdoing but her demeanor during the hearing sufficiently demonstrated the same type of behavior for which she received written warnings and for which she was discharged. The claimant's insubordination 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 March 18, 2013, reference 01, 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.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/tll