

**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**

**TIERRA L STILWELL
PO BOX 175
BUSSEY IA 50044**

**GRIFFIN NURSING CENTER INC
606 N 7TH
KNOXVILLE IA 50138**

**Appeal Number: 04A-UI-02683-CT
OC: 02/01/04 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 for Misconduct

STATEMENT OF THE CASE:

Tierra Stilwell filed an appeal from a representative's decision dated March 2, 2004, reference 03, which denied benefits based on her separation from Griffin Nursing Center, Inc. (Griffin). After due notice was issued, a hearing was held by telephone on April 20, 2004. Ms. Stilwell participated personally. The employer participated by Shirley Kraemer, Administrator, and Janis Topliff, Assistant Director of Nursing.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Stilwell was employed by Griffin from September 5,

2003 until February 4, 2004 as a full-time CNA. She was discharged for failing to perform her duties as assigned.

On December 13, Ms. Stilwell received a warning because she failed to change a resident's undergarments as directed on two occasions. She received a warning on December 26 because she was alleged to have referred to a resident as "helpless" when speaking to another CNA. Ms. Stilwell received another warning on January 30 because she was not taking a resident to the dining hall for lunch as indicated in the resident's care plan and as ordered by her doctor. The final incident which triggered the discharge occurred on February 3 when an incontinent resident was found soaked with urine, including her shoes and socks. The resident, who is alert and oriented, indicated that she had not been taken to the restroom or received any care since before breakfast. Her urine-soaked condition was not discovered until the afternoon of February 3. Because of this final complaint, Ms. Stilwell was discharged on February 4, 2004.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Stilwell was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Stilwell was discharged for failing to provide care to residents as required by her job. While her reference to a resident as "helpless" was perhaps a poor choice of words, the remaining acts complained of by the employer do constitute disqualifying misconduct.

Nursing home residents are generally elderly and dependent upon others for their care. It was part of Ms. Stilwell's responsibilities to provide certain items of care, such as toileting and taking residents to meals. She neglected the care of residents by not making sure they were toileted and changed as needed. The residents who complained of the lack of care were individuals who were all alert and oriented. Ms. Stilwell's conduct could have adversely impacted the employer's license to do business as a care facility. The employer could potentially have been liable if residents' health deteriorated as a result of not having the required care. Ms. Stilwell had ample notice that she was not meeting the employer's standards for care of residents. In spite of the warnings, she continued to act in a manner which was contrary to the employer's interests and standards. For the reasons cited herein, the administrative law judge concludes that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied.

DECISION:

The representative's decision dated March 2, 2004, reference 03, is hereby affirmed. Ms. Stilwell was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

cfc/b