

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DEBRA K RICE**  
Claimant

**APPEAL NO: 11A-UI-00438-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**OC: 12/12/10**  
**Claimant: Respondent (1)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's January 6, 2011 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge to charge because the claimant had been discharged for reasons that do not constitute work-connected misconduct. The claimant participated in the hearing. Susan Zevin represented the employer. Jens Lee and Betty Brockway, the director of nursing, testified on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

**ISSUE:**

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

**FINDINGS OF FACT:**

The claimant started working for the employer in February 2005. She worked as a full-time certified nurse aide.

On March 16, 2010, the claimant received a written warning after some residents complained that she had not assisted them or answered their call light. The warning reminded the claimant her job required her to provide assistance to residents. The warning also indicated that if there was another problem like this, the claimant could be discharged. In May 2010, the claimant talked to her supervisor and understood she was in good standing again because no one complained about her after the mid-March warning.

On December 13, the claimant worked 11:30 p.m. to 7:30 a.m. The claimant helped a resident go to the bathroom three times during her shift. Another employee helped this resident go an additional three times to the bathroom. The last time the claimant took the resident to the bathroom was at 4:20 a.m.

At 5 a.m. CNAs switch halls. The claimant told the CNAs who took over her hall that the above resident's call light was on but the resident had gone to the restroom 20 to 40 minutes earlier.

The claimant heard the CNAs say the resident would have to wait before they took her to the restroom. The claimant then answered a resident's call light on the "new" hall.

The claimant did not see or assist the above resident after 5:05 a.m. The resident reported that the claimant told the resident she would have to wait because she had just gone to the bathroom 20 minutes earlier. The resident was upset that she had to wait before someone took her to the restroom again. Although the claimant denied telling the resident she had to wait before she could go to the restroom again, the employer discharged the claimant based on the resident's complaint.

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

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. 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 propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

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).

Since the claimant denied she told the resident she had to wait an hour before she would take her to the restroom again, the resident's complaint that the claimant told her she had to wait is unsupported hearsay information. Since the resident did not testify at the hearing, the claimant's testimony must be given more weight than unsupported hearsay information from the resident. As a result, the evidence presented during the hearing does not establish the claimant told a resident she had to wait before she would again be taken to the restroom. This means the facts do not establish that the claimant committed work-connected misconduct. As of December 12, 2010, the claimant is eligible to receive benefits.

**DECISION:**

The representative's January 6, 2011 determination (reference 01) is affirmed. The employer discharged the claimant for justifiable business reasons, but the evidence does not establish that the claimant committed work-connected misconduct. As of December 12, 2010, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

---

Debra L. Wise  
Administrative Law Judge

---

Decision Dated and Mailed

dlw/pjs