

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TIMOTHEA K ABBAS**  
Claimant

**APPEAL NO. 11A-UI-12746-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FRANKLIN GENERAL HOSPITAL**  
Employer

**OC: 08-21-11**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the September 22, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on October 20, 2011. The claimant did participate. The employer did participate through Victoria Kruse, human resources manager, and Vernita Hobson, nurse manager of long term care. Employer's Exhibit One was entered and received into the record.

**ISSUE:**

Was the claimant discharged due to job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a nurse aid, part-time, beginning December 31, 2010, through August 25, 2011, when she was discharged. The claimant refused to perform her assigned tasks and would regularly try to get others to perform her required job duties. She was disrespectful in her tone and words to her supervisor and to her coworkers. She had been warned repeatedly that her behavior was placing her job in jeopardy. The employer is required to provide their residents with care that meets state guidelines to insure the residents are treated with dignity. The claimant would not follow a simple request from a resident that she untie the resident's shoes before pulling them off of her feet. The employer's evidence establishes that the claimant knew her own attitude at work and her failure to perform the work as instructed could lead to her discharge. The claimant was warned on June 13, 2011, and June 19, 2011 for treating others in a disrespectful manner. She was suspended over another incident on July 4 when she mistreated a resident. On July 26 she was again warned about her failure to perform her job duties. When she was again combative and disrespectful on August 13 and 22, she was discharged for repeated failure to follow the employer's reasonable instructions.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. EAB*, 531 N.W.2d 645 (Iowa App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). Claimant's repeated failure to accurately perform her job duties after having been warned is evidence of carelessness to such a degree of recurrence as to rise to the level of disqualifying job-related misconduct. Benefits are denied.

**DECISION:**

The September 22, 2011 (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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