

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

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Appeal Number: 06A-UI-03271-ET
OC: 02-12-06 R: 01
Claimant: Appellant (2)

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/Misconduct
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 6, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 11, 2006. The claimant participated in the hearing. Jack Studer, Administrator, participated in the hearing on behalf of the employer with Attorney Dawn Gibson.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time CNA for Care Initiatives from December 7, 2005 to February 10, 2006. On February 9, 2006, the claimant assisted resident Yvonne back from the dinning room and when they reached her room, Ms. Hernandez, another CNA, told the claimant she would bathe the claimant's resident if the claimant would give another resident a food tray. They agreed to trade duties and the claimant left to get a food tray and assumed Ms. Hernandez took Yvonne to put her to bed before bathing the other resident. Yvonne needs a personal alarm with her, which makes a noise if she tries to move from a chair or her bed. The person who takes the resident to her room is generally responsible for putting the resident in her chair or bed with the personal alarm. The claimant was facing the hall with Yvonne standing inside next to the door behind her when Ms. Hernandez asked about the trade of duties. Once the claimant agreed to trade duties she left to go get the food tray and assumed Ms. Hernandez took over Yvonne's care. After the claimant returned from feeding the other resident she noticed her resident had not yet been bathed. She asked Ms. Hernandez about the situation and was told Yvonne fell in the bathroom and broke her shoulder. The employer terminated the claimant's employment February 10, 2006.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the claimant was discharged for misconduct. For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying job misconduct. 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. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). While the claimant agrees she made a mistake in assuming her co-worker was going to finish taking care of resident Yvonne, without the participation of Ms. Hernandez in the hearing it is difficult to determine exactly what happened. The parties disagree about where the trade conversation took place but do agree a trade was made and the trade did not involve resident Yvonne, beyond both parties' seeming assumption that Yvonne was going to be taken care of at that point. Under these circumstances the administrative law judge must conclude that although the claimant should have secured Yvonne with the alarm system, it is not unreasonable to believe that she sincerely believed Ms. Hernandez would do so and did not simply walk away from Yvonne, knowing she could fall. Consequently, benefits are allowed.

The second issue is whether the claimant is able and available for work. For the reasons that follow the administrative law judge concludes she was not able and available for work from the week ending March 18, 2006, through the week ending April 15, 2006.

Iowa Code Section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The claimant had surgery March 14, 2006, and was released to perform light duty work April 13, 2006. Therefore, she is able and available for work beginning the week ending April 22, 2006.

DECISION:

The March 6, 2006, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, except for the dates noted above, provided the claimant is otherwise eligible.

je/pjs