

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MARIANNE D MERRICK
Claimant

ANAMOSA NURSING HOME CO
Employer

APPEAL 14A-UI-08010-LT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/06/14
Claimant: Respondent (2/R)

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

STATEMENT OF THE CASE:

The employer filed an appeal from the July 30, 2014 (reference 01) unemployment insurance decision that allowed benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on August 25, 2014. Claimant did not respond to the hearing notice instruction and did not participate. Employer participated through administrator Robert Richardson and DON Kelly Postel. Employer's Exhibit One was received. The administrative law judge (ALJ) notes that the resident's last name was included within the exhibit pages and has been redacted. Extra editing caution is urged when submitting proposed exhibits for a public record hearing such as this.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a CNA and was separated from employment on July 3, 2014. Resident Pauline, who is without cognitive impairment, made a complaint on July 3 to Postel and her doctor, that on Sunday or Monday, June 29 or 30, as claimant helped Pauline into bed, she urinated on the bed pad. Pauline asked claimant for a clean, dry bed pad. Claimant declined telling her to "sleep on it." Claimant left the room without giving Pauline a fresh bed pad, oxygen, or clean compression hose. Pauline waited for third shift and reported her needs. When confronted claimant refused to say anything (Employer's Exhibit 1, p. 3, 4, 8).

Claimant had a warning for attitude on June 20, 2014 because of her non-verbal cues, being slumped in chair with her arms crossed, and saying "whatever" in response to Postel during a meeting about attendance policy issues (Employer's Exhibit 1, p. 9). She had been warned in writing on February 27, 2014 about not positioning residents properly and failure to place call lights within reach (Employer's Exhibit 1, p. 10). The employer's policy prohibits mistreatment of a resident, which calls for discharge upon a first offense (Employer's Exhibit 1, p. 5, 6).

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 § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

The employer has presented substantial and credible evidence that claimant mistreated a resident by failing to respond to a specific, reasonable request for a clean, dry bed pad and failure to provide usual cares of applying oxygen and clean compression hose. She had prior warnings about failure to place call lights within reach and her insolence towards a supervisor and this was a similar demonstration of poor attitude and failure to follow cares procedures with a resident. Even without prior warning, the employer provided substantial evidence of deliberate conduct in violation of company policy and procedure for resident care. The employer's policy is not unduly burdensome or unreasonable. Benefits are denied.

DECISION:

The July 30, 2014 (reference 01) unemployment insurance decision is reversed. 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.

REMAND:

The overpayment and fact-finding participation issues, pursuant to Iowa Code § 96.3(7) and Iowa Admin. Code r. 871-24.10 respectively, although clearly set out on the hearing notice, are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination because claimant did not participate in this hearing that addressed the separation from employment.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

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