

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WAIYEE S DAHN**  
Claimant

**APPEAL NO: 13A-UI-08827-S**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**S T L CARE COMPANY**  
Employer

**OC: 06/30/13  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated July 26, 2013, reference 01, that held the claimant was not discharged for misconduct on June 18, 2013, and benefits are allowed. A hearing was held in Cedar Rapids, Iowa on August 13, 2013. The claimant participated. Carla Matt, HR Director, participated for the employer. Employer Exhibits 1, 2, 3 and 4 was received as evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant began employment on August 2, 2012, and last worked for the employer as a full-time C.N.A. on June 18, 2013. She received the employer policies in an employee handbook. The employer requires use of a gait belt to transfer a resident, and a zero tolerance for violation.

Nurse Miller reported to the employer claimant failed to use a gait belt to transfer resident GM on June 18, 2013. When confronted by the HR director, claimant denies it. The employer had no eye witness who observed claimant making the resident GM transfer from bed to wheelchair.

The employer evidence is claimant's gait belt was found at the nurse's station and claimant did not remember what belt she used to make the transfer. The employer discharged claimant on June 18 for violation of the policy.

**REASONING AND CONCLUSIONS OF LAW:**

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 administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on June 18, 2013.

The employer had no witness observation claimant failed to use a gait belt in transferring resident GM, and the circumstantial evidence about later locating claimant's belt is not sufficient to establish she violated the policy by failing to use one.

**DECISION:**

The department decision dated July 26, 2013, reference 01, is affirmed. The claimant was not discharged for misconduct on June 18, 2013. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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