

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**CLAIMANT**

**APPEAL 15A-UI-05759-H2T**

**EMPLOYER**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/19/15  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the May 12, 2015, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on June 25, 2015. This case was consolidated for hearing with appeal number 15A-UI-05758-H2T. Claimant participated along with her representative. Employer participated along with their representative.

**ISSUES:**

Was the claimant discharged due to job-connected misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant had been caring for the severely disabled individual, for at least the last ten years. She became part of the disabled individual's care team under a new plan beginning in 2008. As part of the disabled individual's care giving team she was present for the care plan meetings and signed off on those care plans. The claimant knew how the disabled individual was to be cared for and what help the disabled individual required to be kept safe. Under his care plan the disabled individual was not to be left alone at any time. The disabled individual is legally blind and is intellectually disabled. The disabled individual is not able to be safe without assistance in any type of dangerous situation, like a fire or an emergency. The disabled individual lives in apartment with a roommate where they share a caregiver. The disabled individual's parents are the legal guardians.

The claimant worked her normal work shift on April 15 from 3:00 p.m. until 10:00 p.m. She had also volunteered to cover the overnight shift that week and was scheduled to work from 10:00 p.m. until roughly 7:30 a.m. when the bus would pick up the disabled individual and take him to his job.

Between 10:00 p.m. and 10:30 p.m. when both the disabled individual and his roommate were in bed the claimant left the apartment to go to her home, less than one mile away to let her dogs out. While at her home she fell asleep and did not wake up until 8:00 a.m. the next morning.

The claimant left the disabled individual alone unattended for approximately eight hours in violation of the care plan. She knew she was not to leave the disabled individual alone for any reason. In the past she had taken the disabled individual with her to her home while she let her dogs out. She provided no explanation as to why she did not go to her home earlier to let her dogs out or take the disabled individual with her. The claimant knew she was never allowed to leave the disabled individual alone.

The disabled individual's roommate went to the bus stop to catch the bus to go to work. When the bus driver noticed that the disabled individual was not there, he went to the door of the apartment and pounded on it to see if he could get the disabled individual to answer the door. The bus drivers are not allowed to enter the resident's apartments. The disabled individual's legal guardian was notified and she contacted another care giver to go to the apartment immediately to see what was wrong. In the meantime the bus company sent two more different driver's over to the apartment to see if they could knock on the door to get the disabled individual to answer it. The third bus driver opened the door and saw the disabled individual walking out of a bedroom. The third bus driver took the disabled individual with him to the workplace. The disabled individual was not harmed, but had not been given medications, food or showered. The disabled individual did not have a lunch box for the day.

The legal guardian of the disabled individual had tried to reach the claimant via telephone but she did not answer her telephone.

The other worker arrived at the apartment while speaking to the disabled individual's legal guardian on the telephone. The claimant's car was not in the parking lot and the claimant was not in the apartment.

The claimant woke up and called the disabled individual's legal guardian at about 8:15 a.m. The claimant was crying and apologized repeatedly to the disabled individual's legal guardian. It was then that the disabled individual's legal guardian realized that the claimant had left the disabled individual and the roommate alone in their apartment all night long. The disabled individual legal guardian called the roommates legal guardian and reported what had happened. The legal guardian also reported to the disabled individual's case manager what had occurred. The legal guardians of the disabled individual discharged the claimant that same day as they could not trust her with the care of the disabled individual any longer.

Nothing in the disabled individual's care plan allows any care giver, including the claimant to leave the disabled individual alone for any length of time. The legal guardian never gave the claimant permission to leave the disabled individual alone if she so chose. The claimant intentionally chose to leave the disabled individual alone and for whatever reason, fell asleep at her own home.

#### **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).

The claimant knew she was never to leave the disabled individual alone for any period of time, but chose to do so to care for her dog. She jeopardized the safety of the human being she was charged with caring for and protecting by leaving the disabled persona alone for over eight hours. The disabled individual could not have taken appropriate action if an emergency had occurred. The disabled individual need not have suffered physical harm in order to the claimant's actions to be found to be substantial job connected misconduct. The claimant made a deliberate decision to leave the disabled individual alone despite the fact that she had previously taken the disabled individual with her to her home when she cared for her dog. The claimant's actions are such a serious breach of the duty she owed to her employer, that this single occurrence alone, without any warning for similar conduct or behavior is sufficient job connected misconduct to disqualify her from receipt of unemployment insurance benefits. Benefits are denied.

**DECISION:**

The May 12, 2015 (reference 02) 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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