

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

<b>BRENDA WILLIAMS</b> Claimant	<b>APPEAL NO. 07A-UI-00487-BT</b>
<b>CARE INITIATIVES</b> Employer	<b>ADMINISTRATIVE LAW JUDGE DECISION</b>
	<b>OC: 12/03/06 R: 01 Claimant: Respondent (1)</b>

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Care Initiatives (employer) appealed an unemployment insurance decision dated January 4, 2007, reference 01, which held that Brenda Williams (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 31, 2007. The claimant participated in the hearing. The employer participated through Karen Miner, Administrator; Rita Schroeder, RN; Jennifer Barreras, LPN; Michelle McKenna, LPN; and employer representative Alyce Smolsky. Employer's Exhibits One through Three were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-related misconduct?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time certified nurse's aide from September 7, 2006 through December 3, 2006 when she was discharged. The employer's progressive disciplinary policy provides that employees will be terminated after two offenses within their first 90 days of employment. The claimant's first disciplinary was issued on November 14, 2006 when she argued with a supervisor and refused to follow a directive. The final incident occurred on December 2, 2006 when four alarms were not placed on residents. The claimant was working with another employee and since the employer could not determine who had failed to secure the alarms, both employees were disciplined.

**REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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.

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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. 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 substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The claimant was discharged per the employer's progressive disciplinary policy. The employer's policy provides that an employee will be terminated after their second disciplinary warning within the first 90 days. The claimant was discharged for two written warnings within the first 90 days. With regard to the final incident, however, the employer testified the claimant and another employee were working together and the employer could not determine who had failed to set the alarms on the residents so both were disciplined. Consequently, the employer has not proven by a preponderance of the evidence that the claimant committed the final act for which she was discharged. Work-connected misconduct as defined by the unemployment insurance law has not been established in this case and benefits are allowed.

**DECISION:**

The unemployment insurance decision dated January 4, 2007, reference 01, is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

---

Susan D. Ackerman  
Administrative Law Judge

---

Decision Dated and Mailed

sda/css