

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JANET ORR**  
Claimant

**APPEAL NO: 12A-UI-12069-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EMERITUS PROPERTIES II**  
Employer

**OC: 08/26/12**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Janet Orr (claimant) appealed an unemployment insurance decision dated September 27, 2012, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Emeritus Properties II (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 1, 2012. The claimant participated in the hearing with Attorney Mark Hudson. The employer participated through Sherri Niles, executive director. Claimant's Exhibit A was 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 claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The employer is a licensed residential care facility that primarily deals with geriatric patients. The employer has approximately 37 employees and 47 residents. The claimant was employed as a full-time resident assistant from October 4, 2002 through August 29, 2012, when she was discharged for failing to provide kind and considerate care to a resident.

A resident was transported to the hospital at approximately 10:30 p.m. on August 27, 2012 and was admitted with a broken hip. The claimant had taken care of that resident earlier and failed to promptly report the resident's complaints of left hip pain. At approximately 7:30 p.m., she transferred the resident from a chair, to a wheel chair, and to the shower chair where she proceeded to give the resident a shower. The resident was moaning and complaining of pain. The claimant observed a large bruise on the resident's left hip while undressing and showering the resident.

The claimant dressed and transferred the resident back into the wheel chair after the shower was completed. She wheeled the resident back to her room again and the resident continued to complain of pain. The claimant transferred the resident from her wheel chair back into her bed, but the resident was unable to lift her legs due to pain, so the claimant physically lifted the resident's legs. The claimant did not report the resident's condition and complaints until an hour and a half later when she notified a medication aide, who immediately went to evaluate the resident. It was determined the resident needed medical treatment and she was transferred to the hospital.

## **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 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 employer has the burden to prove the discharged employee is disqualified for benefits due to work-related misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on August 29, 2012 for failure to provide kind and considerate care to a resident. She provided care to a resident on August 27, 2012, but did not promptly report the resident's condition or her complaints. The resident had a broken hip and

the claimant could have alleviated the resident's pain three hours earlier if she had done what her job duties required her to do. The claimant's conduct shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

**DECISION:**

The unemployment insurance decision dated September 27, 2012, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because she was discharged from work for misconduct. Benefits are withheld until 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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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/kjw