

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**KAREN A RUTH  
504 S UNION  
ROCK RAPIDS IA 51246**

**SIOUX CENTER COMMUNITY HOSPITAL  
AND HEALTH CENTER  
605 S MAIN AVE  
SIOUX CENTER IA 51250**

**Appeal Number: 04A-UI-09330-HT  
OC: 07/25/04 R: 01  
Claimant: Appellant (1)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant, Karen Ruth, filed an appeal from a decision dated August 19, 2004, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on September 22, 2004. The claimant participated on her own behalf and with a witness Amanda Engeltjes. The employer, Sioux Center Community Hospital and Health Center (Sioux Center), participated by Human Resources Director Brenda Van Dyke, Senior Services Director Connie Hulhoff and Certified Nursing Assistant Jennifer Wibben. Exhibits One, Two, Three, Four, Five and Six were admitted into the record.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Karen Ruth was employed by Sioux Center from January 28 until July 26, 2004. She was a full-time certified nursing assistant.

The claimant received a verbal warning on April 8, 2004, for absenteeism. The problem did not improve and she was given a written warning on July 8, 2004. The warning notified her she was being referred to the employee assistance program for a mandatory assessment.

On July 22, 2004, Supervisor Abby Van Zee was notified by two CNAs that the claimant had refused care to a resident. The resident had complained to Arta Schoep that he had put on his light at 4:00 a.m. and Ms. Ruth had responded. He asked for assistance to get up and get dressed and she said she was too busy, but would be back in 10 or 15 minutes. However, she never returned. The claimant also notified CNA Jennifer Wibben that the resident needed assistance.

The resident was very angry about being left for an hour without assistance. He wrote a formal letter of complaint about the incident, identifying Ms. Ruth as the CNA who had responded initially to his call-light. The matter was investigated by Ms. Van Zee, who then reported to Senior Services director Connie Hulhoff and Director of Human Resources Brenda Van Dyke on July 23, 2004. The claimant's record was reviewed and as a follow-up to the prior disciplinary action, the EAP was contacted. Ms. Ruth had never reported for an assessment as required.

The claimant was discharged by Ms. Hulhoff and Ms. Van Zee on July 26, 2004, for failure to perform her duties and denying care under the patient's bill of rights.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant was discharged for conduct not in the best interests of the employer. She not only failed to undergo the mandatory EAP assessment, but denied care to a resident. Ms. Ruth was not involved in critical care of any other resident but was passing water when the call light went on. The record does not establish any good cause for her to have failed to assist the resident with getting up and getting dressed. The employer is responsible for providing care and medical attention to the residents and the claimant's conduct interfered with its ability to do so. This is misconduct and the claimant is disqualified.

DECISION:

The representative's decision of August 19, 2004, reference 01, is affirmed. Karen Ruth is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount provided she is otherwise eligible.

bgh/kjf