

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ASHLEY N MCCREADY
Claimant

APPEAL NO: 07A-UI-00839-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BARTELS LUTHERAN HOME INC
Employer

**OC: 12/10/06 R: 03
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Ashley N. McCready (claimant) appealed a representative's January 17, 2007 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Bartels Lutheran Home, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 14, 2007. The claimant participated in the hearing with her union representative, Tom Moritz. Brienne Brunner, the director of nursing, Carol Brown and Lisa Swaney appeared on the employer's behalf. 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:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The employer rehired the claimant on June 12, 2006, to work as a full-time certified nursing assistant. In this capacity part of the claimant's job duties required her to work as a bath aide.

In 2003, the claimant received training to work as a certified nursing assistant at the employer's facilities. Although the employer did not train the claimant to have residents stand when they are bathed, the claimant had done this in other facilities and incorporated this method when she worked as a bath aide for the employer. Prior to December 11, 2006, no one questioned how the claimant gave residents baths or that informed the claimant there was any problem with the way she performed this job duty.

The employer expected residents to remain seated on a shower chair and that all bowel movements would be removed while the resident sat on the chair. The bath aide was to remove a bucket that contained waste material and when the bucket was removed, the resident could be cleaned. If the claimant could not remove the bucket or completely clean a resident, she gave them pericare when she returned them to their room.

On December 11, 2006, a relatively new employee asked if the claimant emptied the bucket and washed residents' bottoms as the residents received their showers. The claimant indicated she did not do this all the time but made sure the residents were clean when they returned to their room. The new employee noticed several residents who returned from the shower and still had bowel movement on their skin. When the new employee asked a trainer how residents should be cleaned in the shower, she reported the conversation she had with the claimant.

On December 11, Swaney, a nurse, saw a shower chair in the hallway that had a dirty seat and noticed the bucket had not been emptied. The claimant had left the chair in the hallway after returning a resident to a room because a co-worker told the claimant to go on her break. The claimant understood her co-worker would take care of the shower chair because the claimant had to take a break. The employer also noticed a chair in the shower area that had liquid in the bucket. The employer concluded the claimant did not sanitize chairs after each resident. The claimant, however, sanitized chairs after a resident used it and before another resident used the chair.

On December 13, 2006, the employer discharged the claimant for failing to treat residents in a dignified manner and properly cleaning shower chairs and residents on December 11, 2006. The employer considered the claimant to have committed gross misconduct.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. 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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The evidence indicates the claimant performed her job as a bath aide on December 11, 2006, as she had always performed this job. Even though the employer saw a chair in the hall that was dirty, the facts indicate a co-worker told the claimant to go on break instead of cleaning the chair. Seeing a chair in the shower room with liquid in the bucket does not establish that the claimant was responsible for that chair or that the chair was ready for the next resident.

The employer had a right to be alarmed or concerned when five residents came back from the shower room and still have bowel movement on their skin. According to the claimant's

testimony, this was not necessarily unusual, but she always made sure the resident received pericare if they were not clean after a shower.

Since the claimant did not follow the employer's standard procedure when giving residents a bath, the employer had business reasons for discharging the claimant. The facts do not establish that the claimant committed work-connected misconduct. The evidence indicates the claimant made sure residents were properly cleaned and sanitized the shower chair after each resident. It is hard to understand why no one noticed or reported problems with residents not being properly cleaned by the claimant prior to December 11. The facts suggest the claimant did not follow the employer's procedure, but took reasonable steps to make sure residents were clean. There is no evidence indicating the claimant intentionally failed to sanitize shower chairs after any resident used it. As of December 10, 2006, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's January 17, 2007 decision (reference 02) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of December 10, 2006, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefit paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs