

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROBIN K BRAL**  
Claimant

**APPEAL NO. 10A-UI-15859-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WESCO INDUSTRIES**  
Employer

**OC: 10/17/10**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Robin Bral (claimant) appealed a representative's November 9, 2010 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Wesco Industries (employer) for failure to follow instructions in the performance of her job. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 29, 2010. The claimant was represented by Jay Smith, Attorney at Law, and participated personally. The employer participated by Susan Hillgartner, Human Resource Director. The employer offered and Exhibit One was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on August 6, 1986, as a full-time community support staff. The claimant signed for receipt of the employer's handbook in 2009. The claimant had training on March 3, 2010.

On March 16, 2009, the employer issued the claimant a written warning and suspension for a medication error. On June 22, 2010, the employer issued the claimant a written warning for recording events before the events occurred. The employer had a new computer recording system. The claimant recorded events after they occurred but the computer showed a time prior to the event. On July 15, 2010, the employer issued the claimant a written warning for not entering an appointment time on the computer recording system. The claimant was unaware of the appointment time, as a co-worker made the appointment and was supposed to record it.

On October 12, 2010, the claimant was notified that a resident was not getting up from the chair. The claimant went to investigate. She placed a warm cloth on the resident's skin. The resident said, "No". The claimant called her supervisor and asked what she should do. The supervisor said she would support the claimant's choice. The claimant chose to call 911. Later that day,

the employer terminated the claimant for calling her supervisor before calling 911. The employer said the resident was unresponsive and that calling a supervisor before 911 was in violation of a policy and procedure that is not in the handbook.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was not discharged for misconduct.

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 of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. In this case, the employer was not on site to actually view the resident's behavior. The claimant used her judgment to care for the resident. She was unaware of any policy and procedure that stated she should call 911 in the situation as it occurred on October 12, 2010. The employer did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

**DECISION:**

The representative's November 9, 2010 decision (reference 01) is reversed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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