

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRI M ARENDS
Claimant

APPEAL NO. 11A-UI-13844-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABCM CORPORATION
Employer

**OC: 10/02/11
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 19, 2011 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on November 15, 2011. Claimant participated. Employer participated through administrator Angela Klus and DON Carrie Thomas. Employer's Exhibit 1 (fax pages 3 – 9) was admitted to the record.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a CNA from 1999 and was separated from employment on October 3, 2011. On September 30 resident Gladys complained that claimant bruised her while being rough removing ("ripped") her robe over her head. She continued being rough after Gladys told her "Ow, that hurt!" Gladys had a dark purple bruise about five by three centimeters in size on the top of her right forearm and told Thomas that claimant always rushed when working with her. (Employer's Exhibit 1, fax page 4) Claimant did not assess the pain or injury and did not report the issue to the nurse. Gladys is not normally an accusatory person. Claimant told the employer she thought the resident hurt her arm on the walker and did not say she had apologized to Gladys until the appeal hearing. (Employer's Exhibit 1, fax page 7) The employer does not know whether claimant actually caused the bruise but objects to the claimant "not exercising gentle and considerate care" or reporting the incident. (Employer's Exhibit 1, fax pages 3, 8) Claimant had been warned in writing for a lack of considerate treatment on September 1, 2010 when she failed to respond to a call light after 20 minutes and then said she could not take the resident to the bathroom before she went on break. Another resident complained the same day that she failed to scoot his wheelchair closer the urinal when asked and he no longer wanted her working with him.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

Claimant's repeated failure to provide "gentle and considerate" care to a resident after having been warned is evidence of carelessness to such a degree of recurrence as to rise to the level of disqualifying job-related misconduct. Benefits are denied.

DECISION:

The October 19, 2011 (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css