

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMIE M STEPHENSON
Claimant

APPEAL NO. 06A-UI-10260-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOOD SAMARITAN SOCIETY INC
Employer

**OC: 09/17/06 R: 01
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge
Section 95.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Good Samaritan Society, filed an appeal from a decision dated October 17, 2006, reference 01. The decision allowed benefits to the claimant, Jamie Stephenson. After due notice was issued a hearing was held by telephone conference call on November 6, 2006. The claimant did not provide a telephone number where she could be contacted and did not participate. The employer participated by Administrator Jennifer Meyers and Director of Nursing (DON) Diane Meier.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Jamie Stephenson was employed by Good Samaritan from January 3 until September 13, 2006. She was a full-time certified nursing assistant (CNA). She had received written warnings on March 31 for roughness with a resident, and June 1, 2006, for insubordination. The second warning was issued by DON Diane Meier who told the claimant the next disciplinary step would be discharge.

On September 5, 2006, a resident requested to meet with Administrator Jennifer Meyers. At the meeting the resident complained about the claimant being very rough with her and causing bruises on her arm. An investigation was conducted as this was considered an incident of abuse. The investigation consisted of interviews with residents and other staff members.

The report of abuse could not be established but statements from staff and residents indicated numerous incidents of rough handling of residents and a general attitude of refusing to follow instructions and ask for help. Ms. Stephenson was discharged after the investigation concluded on September 13, 2006.

Jamie Stephenson has received unemployment benefits since filing a claim with an effective date of September 17, 2006.

REASONING AND CONCLUSIONS OF LAW:

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 had been warned about her failure to follow instructions and ungentle handling of residents. She had also been advised her job was in jeopardy if there were any further incidents. Ms. Stephenson did not improve her performance but continued to refuse to ask for help in caring for residents and treating them disrespectfully. The employer has the obligation to provide care and assistance to elderly, dependent adults and the claimant's conduct interfered with its ability to do so. This is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of October 17, 2006, reference 01, is reversed. Jamie Stephenson is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$852.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs