

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LORI K COVERT**  
Claimant

**APPEAL NO. 10A-UI-02948-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**Original Claim: 01/31/10  
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The employer, Care Initiatives, filed an appeal from a decision dated February 16, 2010, reference 01. The decision allowed benefits to the claimant, Lori Covert. After due notice was issued, a hearing was held by telephone conference call on April 8, 2010. The claimant participated on her own behalf and with witnesses Joann Shadley and Tracy Huff. The employer participated by DON Donetta Ware, Administrator Patrick Carmody, and was represented by TALX in the person of Lynn Corbeil. Exhibit One was admitted into the record.

**ISSUE:**

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

**FINDINGS OF FACT:**

Lori Covert was employed by Care Initiatives from August 27, 2007 until January 29, 2010 as a full-time CNA on the second shift. She had received a copy of the employee handbook and training on how to perform the resident cards.

She received coaching and written warnings in 2009 for issues ranging from rudeness to residents, peri-care, failure to use a gait belt, and eating in the dining room when she should have been feeding the residents. The final warning was issued January 15, 2010, for rudeness to a resident. She was advised her job was in jeopardy.

On January 28, 2010, a charge nurse reported to DON Donetta Ware, that a third-shift CNA had reported that a resident had not been properly cleaned after an involuntary bowel movement the evening before. The resident is alert and oriented and Ms. Ware took her statement on the same day she received the report. The resident identified Ms. Covert as having cleaned her the night before approximately three times, but dried feces was found by the third shift CNA some hours later. The resident was concerned about possible infection.

Ms. Ware met with the claimant on January 29, 2010, and only told her a resident had complained about lack of proper peri-care without identifying the resident. The claimant was discharged immediately.

The claimant acknowledged she had done peri-care on the resident in question and had cleaned her three times due to continuing loose stools in the process. Her witness acknowledged she had assisted with the peri-care and, while putting barrier cream on the resident after Ms. Covert had done the cleansing, saw no sign of feces. The resident's loose stools were reported at the change of shift that night.

## **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.

The employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). In the present case, the employer has not been able to provide any first-hand, eyewitness testimony regarding the improper peri-care for the resident. It also did not explain why the resident, if she were so concerned, did not notify a charge nurse immediately. In fact, the resident seems only to have become aware of the situation after another CNA informed her. There is no definite proof the resident's loose stools did not soil the area after the claimant had cleaned her.

In order for a claimant to be disqualified, there must be a current, final act of misconduct that precipitates the discharge under 871 IAC 24.32(8). Without more definite proof of inadequate resident care on the part of the claimant, the administrative law judge cannot conclude the employer has met its burden of proof. Disqualification may not be imposed.

**DECISION:**

The representative's decision of February 16, 2010, reference 01, is affirmed. Lori Covert is qualified for benefits, provided she is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/kjw