

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**PATIENCE A TUKPAH**  
Claimant

**APPEAL NO. 21A-UI-02519-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**OC: 09/27/20**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated December 29, 2020, reference 02, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on March 5, 2021. Claimant participated personally. Employer participated by hearing representative Alyce Smolsky and witnesses Kayla Harken, Kristen Lyons, and Cheryl Dreyer. Employer's Exhibits 1-4 were admitted into evidence. Interpretive services were provided by CTS Language Link.

**ISSUE:**

Whether claimant was discharged for misconduct?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on September 27, 2020.

Employer discharged claimant on September 29, 2020 because claimant had a number of alleged incidents over the weekend of September 25-27, 2020 where claimant was not following orders of superiors and not aiding clients when they requested help.

On September 25 claimant was alleged to have refused to get two different residents out of bed when they requested assistance. Employer gave testimony that claimant supposedly told one of the residents that she'd have to wait three hours, and then made the patient wait four hours before she and another CNA aided the resident to get out of bed. The resident stated she didn't want claimant to serve her after this incident. The other incident wasn't as specifically mentioned.

Claimant was alleged to have refused to give a resident a bed pan on September 27. Claimant supposedly told that resident that she'd recently used a restroom and didn't need to have a bedpan. Claimant denied this and stated that the resident was one who would throw herself onto the floor and act up. She was attempting to calm the resident, but never denied a bed pan.

Additionally on September 27 claimant was accused of refusing a charge nurse's request that claimant help a person who was walking with a walker, but without an assistant. Employer stated that the documents the CNA's look at every shift stated that this resident must always be accompanied when out of his room. Claimant stated that this person was often out of bed without assistance, and she was busy doing other charting when asked.

Claimant had received a warning previously for not following directives.

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

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, Id. In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, Id. Here, claimant's statement about not knowing a resident needed to have assistance was countered by employer's statement that said instruction is listed in his report that is looked at every day by caretakers including claimant. This reduces claimant's credibility.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning proper care for residents and following of the instructions of superiors. Claimant was warned concerning this policy.

The last incident, which brought about the discharge, constitutes misconduct because claimant had not just one or two occasions that may have led to health risks for residents, but four such incidents in a three day period. Such numerous incidents that endanger the elderly constitute good cause for termination. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

**DECISION:**

The decision of the representative dated December 29, 2020, reference 02, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.



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Blair A. Bennett  
Administrative Law Judge

March 12, 2021  
Decision Dated and Mailed

bab/mh