

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 employed as a full-time certified nurse's aide at Willow Dale Wellness Village from September 3, 2003 through August 16, 2005. She was discharged for unprofessional behavior and inappropriate treatment of residents. The claimant knew her job was in jeopardy after she received a serious written warning on July 3, 2005. The warning was issued for insubordination; violation of resident rights; dishonesty; failure to accept supervision, direction, discipline and to accept reasonable instruction; and incompetence. The following incidents were what prompted the warning.

On June 1, 2005, a female resident requested rectal cream and the claimant told her the nurses were too busy but never advised the nurses of the resident's request. On June 2, 2005, the claimant entered a resident's room where another nurse aide was providing care and the claimant told the nurse aide that she did not know what she was doing. At the hearing, the claimant stated that it might have come out that way. On June 7, 2005, the claimant was asked to take a resident outside to smoke and the claimant admitted she said no. On June 18, 2005, the claimant refused to assist on another hall when the shift was short one nurse aide but claimed at trial that she "can't believe I did that." On July 2, 2005, the claimant refused to give one resident a toothbrush and refused to toilet another resident. With regard to that complaint, the claimant stated she "can't believe I would ever do that." On July 3, 2005, she left a resident on the toilet for 20 minutes and she failed to advise the nursing staff that a resident's family was going to pick up that resident on July 4, 2005. The claimant also saw a bruise and failed to report it to a nurse, although she claims she did talk to another co-employee about it.

The claimant was discharged when the employer learned of her conduct with a resident on August 14, 2005. The claimant was helping a male resident who was rather large and the claimant had a hard time moving him. It was easier for her if the resident ate dinner in his room instead of the dining room. The standard operating procedure was to simply take the residents down to the dining room for dinner but the claimant told the resident he could make a choice as to whether he wanted to go to the dining room or not. The claimant gave him this option even though she stated it would be better for him if he went to the dining room. The resident ended up staying in his room for dinner. On that same date, the resident requested a urinal and the claimant admittedly rolled her eyes at him. The claimant later told the resident the nurse said he needed to go to bed, but the nurse had not given that directive. The final incident was when the claimant argued with the charge nurse when the nurse was trying to lift the resident by using a lift. The claimant did not believe the charge nurse knew how to properly use the lift. The charge nurse finally told the claimant to go get someone else to help her. The employer spoke with the resident at a later time and the resident stated that he thought the claimant and the charge nurse were "gonna come to blows."

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. 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 section 96.5-2-a.

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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for repeated unprofessional and inappropriate behavior. While she contends she did nothing wrong, she admitted several of the allegations that were listed in the written warning and those that prompted the discharge. The claimant's conduct was detrimental to the residents' health and welfare. Her actions were a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated September 2, 2005, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been

paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

sdb/kjw