

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

REBECCA S JONES
Claimant

APPEAL NO. 08A-UI-05933-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOOD SAMARITAN SOCIETY INC
Employer

**OC: 05/25/08 R: 04
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Rebecca S. Jones (claimant) appealed a representative's June 23, 2008 decision (reference 01) that concluded she was not qualified to receive benefits, and the account of Good Samaritan Society, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 14, 2008. The claimant participated in the hearing. Kari Kalber, Paula Clark, the director of nursing, and Gina Kirkeeng appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on October 4, 2004. The claimant worked as a full-time certified nursing assistant. The claimant received information about the employer's policies. One of the policies informed the claimant that if an employee had three written warnings for group two violations within a year, the employer would discharge the employee.

On August 20, 2007, when the claimant worked a night shift, another employee discovered the claimant had fallen asleep during her ten-minute break. The claimant went on break at 12:48 a.m. and did not return until 1:07 a.m. When another employee discovered the claimant in the break room, she woke up the claimant. The employer gave the claimant a written warning for this incident even though employer's policy indicates an employee may be discharged for sleeping during a shift.

The employer gave the claimant a second written warning on August 20 for failing to check a resident every two hours. The claimant had not checked on a resident for over five hours during this shift. The second written warning was considered the claimant's final written warning for a

group two violation. The claimant understood her job was in jeopardy if she received anymore group two written warnings.

In mid-May 2008, the claimant brought food to a resident's room to feed the resident. The claimant removed a fall mat by the resident's bed and placed the tray by the resident's bed. The resident was sleeping and the claimant had an immediate need to use the restroom. Instead of putting the fall mat back in place, the claimant just had the tray with food next to the resident's bed. The resident also had alarms set so if the resident fell, an alarm went off.

While the claimant used the restroom, the resident fell on the floor. Another employee found the resident on the floor. The claimant returned to the resident's room as soon as she finished in the restroom. The resident did not suffer any significant injury.

On May 22, 2008, Clark informed the claimant that the employer had to discharge her because she failed to put the floor mat back in place when she left the resident's room. The employer considered this a group two violation. Since the employer had to give the claimant her third written warning within a year, the employer's policy required the employer to discharge the claimant. The employer told the claimant that in six months she could be reapply for a job.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. 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 propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good-faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer discharged the claimant after she failed to put a fall mat back in place when she left a resident's room to use the restroom. Since the resident was sleeping, the claimant incorrectly assumed the resident would still be asleep when she returned from the restroom. The facts establish the claimant used poor judgment when she left the resident's room to use the restroom but did not put the fall mat back in place. Even though the employer established business reasons for discharging the claimant, the claimant did not commit work-connected misconduct. As of May 25, 2008, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements.

DECISION:

The representative's June 23, 2008 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of May 25, 2008, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw