

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOANN G CARDER**  
Claimant

**APPEAL NO. 07A-UI-05085-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ATRIUM VILLAGE INC**  
Employer

**OC: 04/15/07 R: 03  
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Joann Carder filed an appeal from a representative's decision dated May 9, 2007, reference 02, which denied benefits based on her separation from Atrium Village, Inc. After due notice was issued, a hearing was held by telephone on June 5, 2007. Ms. Carder participated personally. The employer participated by Dorothy Good, Administrator; Janice Lenz, Secretary; Karen Johnson, Director of Nursing; Kari Lampe, CNA; and Steve Emerson, Maintenance Supervisor. Exhibits One, Two, and Three were admitted on the employer's behalf.

**ISSUE:**

At issue in this matter is whether Ms. Carder was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Carder was employed by Atrium Village, Inc. from May 14, 2003 until April 16, 2007. She was last employed part-time as a charge nurse working from 16 to 24 hours each week. She was discharged for working more hours than allotted. At the time of separation, she was scheduled to work from 2:00 p.m. until 10:15 p.m. four days a month. The employer wanted her to leave the facility by no later than 10:15 p.m. Ms. Carder was given a verbal warning on November 29, 2006 because she was leaving the facility late.

The administrator spoke with Ms. Carder on March 8, 2007 about the fact that she was leaving work between 11:00 and 11:30 p.m. The administrator also advised her that she was spending too much time visiting with residents and residents' family members. Ms. Carder left work at 10:39 p.m. on March 18; 11:15 p.m. on March 22; and at 10:53 p.m. on April 1. She left at 10:10 p.m. on April 15 but returned to complete work. During the period from September 5, 2006 though April 15, 2007, Ms. Carder left work by 10:30 p.m. on only six occasions out of 57 days worked. She had been told that any work she could not complete during her shift could be left for the next shift.

In making the decision to discharge, the employer also considered other lapses in Ms. Carder's performance. She failed to immediately change a resident's colostomy bag on September 14, 2005. When the request was made, she commented "I'm going to kill him." The statement was made in the presence of other residents. The employer received a complaint in November of 2006 that Ms. Carder was rude to hospice employees. On February 8, 2007, Janice Lenz asked Ms. Carder if a resident could be taken from the dining room and provided a tray so she could eat in her room. The resident was upset and did not want to be around people in the dining room. Ms. Carder indicated that the resident was a "pain in the ass" and that she was fine where she was. Ms. Carder did not take steps to move the resident as requested. The administrator had asked that change-of-shift reports be recorded to minimize the amount of time spent on that activity. The recorded report would eliminate the need for a meeting between the outgoing and oncoming shifts. Ms. Carder was taking approximately 45 minutes to give the report orally. The employer estimated it would only take from five to ten minutes to record the report. Ms. Carder did not record the reports as directed by the employer.

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

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). For reasons that follow, the administrative law judge concludes that the employer has satisfied its burden of proof. Ms. Carder had been warned in November of 2006 and March of 2007 that she was not to work beyond a certain time. In spite of the warnings, she continued to exceed her allotted hours. Her failure to leave work by the designated time meant the employer was paying to have two nurses on duty during the times Ms. Carder stayed over into another shift. In essence, she would not cooperate in the employer's efforts to contain costs. She had been told she could leave tasks for the next shift in order to leave by the designated time. Ms. Carder would have had more time to perform assigned duties if she had recorded the change-of-shift reports as directed by the employer. She disregarded her employer's directives in favor of doing what she, herself, felt was the best use of her time.

The administrative law judge concludes that Ms. Carder's failure to conform her hours to the employer's expectations after warnings constituted a substantial disregard of the standards the employer had the right to expect. Her conduct resulted in unwarranted additional cost to the employer as the employer had to pay for the hours worked beyond the allotted hours. For the reasons stated herein, benefits are denied.

#### **DECISION:**

The representative's decision dated May 9, 2007, reference 02, is hereby affirmed. Ms. Carder was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/pjs