

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**ROSE A BARTSCH
1209 – 11TH ST
ELDORA IA 50627**

**CARE INITIATIVES
c/o JOHNSON & ASSOCIATES
PO BOX 6007
OMAHA NE 68106-6007**

**LARRY JOHNSON
ATTORNEY AT LAW
222 OAK ST
IOWA FALLS IA 50126-2304**

**Appeal Number: 05A-UI-00376-LT
OC: 12-12-04 R: 02
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Iowa Code §96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the January 7, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on February 24, 2005. Claimant did participate with Shannon Bisby and was represented by Larry Johnson, Attorney at Law. Employer did participate through Alison Anderson, Sue Sly and Tammy Kapel and was represented by Roxanne Beckaert of Johnson & Associates. Employer's Exhibit 1 was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed December 5, 2002 as a laundry aide until September 2003 when she became a part-time CNA through December 16, 2004 when she was discharged. On December 15 in the

early morning claimant and Shannon Bisby, charge nurse, went outside for a cigarette and left the residents unattended. Keela was working in the locked Alzheimer's unit, not the general population area where claimant worked.

When Sue Sly reported for work at 5:00 a.m., she found the door open and the alarm off but did not see anyone in the area by the nurse's station. Nor did she see anyone by the time clock or break room or by the nurses' station and believed them to be in the ward. After returning from the time clock and break room, she observed claimant and Shannon Bisby and an unidentified person leaving the nurse's station going out through the front door. They did not acknowledge Sly's presence or let her know where they were going. She saw Bisby return at least 20 minutes later but did not see the others. Sly was not present to work a shift but was to work on care plans rather than resident care. Before taking a break, an individual is to make sure that another person is covering the residents during their absence.

During the night shift, as long as one person is covering the general population and another is covering the Alzheimer's ward, the third employee is allowed to go outside to smoke.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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).

Regardless of whether the CNA memo was issued before claimant became a CNA, mere common sense dictates that the entire general population of the nursing facility not be unattended while nursing personnel take a cigarette break. Even though Sly was present in the building, she was occupied with other duties and claimant made no attempt to let her or anyone else know she was going on break and needed someone to attend to the residents in her absence. Claimant exposed employer to great risk and engaged in misconduct when she left residents unattended who are sufficiently disabled as to be in need of employer's full-time medical care and supervision. Benefits are denied.

DECISION:

The January 7, 2005, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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