

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NATALIE J MORROW
Claimant

APPEAL NO. 11A-UI-08867-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA JEWISH SENIOR LIFE CENTER
THE LIFE CENTER**
Employer

**OC: 07/01/11
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated July 1, 2011, reference 01, that held she was discharged for misconduct on June 6, 2011, and which denied benefits. A telephone hearing was held on July 27, 2011. The claimant participated. Dee Dolezal, D.O.N., participated for the employer. Employer Exhibit 1 was received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant began employment as a full-time C.N.A on May 9, 2007, and last worked for the employer on June 6, 2011. The claimant received an employee handbook that contained the policies of the employer and training regarding resident care. The claimant knew that she was required to treat residents with compassionate care.

The employer issued a written warning to claimant on May 18, 2011 for an incident involving a resident on May 14. In front of a resident and charge nurse, claimant made a comment about the resident going to the bathroom all the time. The resident became tearful at the remark, and the nurse reported this incident to the D.O.N., who issued a written warning for upsetting the resident. The warning states that claimant may be subject to further disciplinary action up to and including termination if the situation is not corrected. Claimant admits she was having a bad week, and though she disagreed with the warning, she made no comment.

On June 6, the claimant had helped a resident to the bathroom. A short time later, claimant was called to do so again. In the presence of the resident, claimant stated to a nurse that she had just been here ten minutes ago to do the same thing. Claimant knew the resident was a

sensitive person. The resident became tearful and upset at claimant's remark. The employer discharged claimant for mistreatment of the resident in light of the prior warning.

REASONING AND CONCLUSIONS OF LAW:

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.

The administrative law judge concludes the employer has established that the claimant was discharged for misconduct in connection with employment on June 6, 2011, for a repeated incident of resident mistreatment.

The claimant knew the employer's standard of care required for residents due to written policy and training. The employer put claimant on notice with a warning that her commenting about the care in front of a resident to the point of upsetting that resident would not be tolerated. When claimant repeated her ill-advised conduct with a resident on June 6, it became job-disqualifying misconduct in light of the prior warning.

DECISION:

The department decision dated July 1, 2011, reference 01, is affirmed. The claimant was discharged for misconduct on June 6, 2011. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw