

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**STARLA R WHEELOCK**  
Claimant

**APPEAL NO. 09A-UI-19185-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RESIDENTIAL ALTERNATIVES OF IOWA  
WINDMILL MANOR**  
Employer

**OC: 11/15/09  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated December 9, 2009, reference 01, which denied benefits based upon her separation from Residential Alternatives of Iowa. After due notice, a telephone conference hearing was scheduled for and held on February 2, 2010. The claimant participated personally. The employer participated by Ms. Stacy Willey, Assistant Administrator; Karen Etter, Director of Nursing/Supervisor, and Carla Chevez, Quality Assurance Nurse. Claimant's Exhibits One and Two were received into evidence.

**ISSUE:**

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Starla Wheelock was employed by Residential Alternatives of Iowa, doing business as Windmill Manor, as a full-time licensed practical nurse from May 5, 2008 until November 19, 2009 when she was discharged from employment. Ms. Wheelock worked on the third shift and was paid by the hour. Her immediate supervisor was Karen Etter, Director of Nursing.

Ms. Wheelock was discharged based upon her failure to provide required notification and charting for an incident that took place in the dementia wing of the employer's facility on or about the night of November 19, 2009. At that time a male and female dementia patients were discovered unclothed sharing a common bed. Ms. Wheelock informed the next work shift of nurses of the incident during morning report at the end of her shift. The claimant did not follow up on the incident by notifying the female patient's doctor, her family or the director of nursing of the incident although Ms. Wheelock was aware that under law it was mandatory for her to report any suspected abuse of a dependent adult. Ms. Wheelock believed that no sexual activity had taken place although the claimant was unable to fully examine the female resident following the incident.

Because of the mandatory nature of the reporting requirement for any suspected abuse or maltreatment of a dependent adult, the employer considered the claimant's omission to be a serious breach of the employer's expectations as well as state law and a decision was made to terminate Ms. Wheelock from her employment. During the course of her employment Ms. Wheelock had received a number of warnings and had been specifically warned on October 23, 2009 when she had failed to report an incident where a resident had fallen.

It is the claimant's position that she did not notify the female patient's doctor, her family or the director of nursing about the incident because she believed that the matter would later be reviewed by management and a decision would be made as to how to present the event. Ms. Wheelock also believes that her immediate supervisor, Ms. Etter, had acted unfairly in discharging the claimant. Because Ms. Etter had objected in the past to calls at home for more routine matters, the claimant believed that calling Ms. Etter at home that night might have angered her supervisor. Ms. Wheelock denies being unavailable the following day to accept telephone calls from her employer about the matter.

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

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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.

In this matter Ms. Wheelock, who was the LPN on duty on the night in question, had a mandatory duty under the law to report any suspected abuse, maltreatment or conduct that may have endangered a dependent adult under the care of Residential Alternatives of Iowa. After finding a female dependent adult unclothed in bed with a male dependent adult who was also unclothed, Ms. Wheelock had a reasonable suspicion that some conduct may have occurred that could have been detrimental or harmful to the female dependant adult resident. The claimant was unable to examine the female resident and did not take any action to have the resident taken elsewhere for a physical examination. Under these circumstances the administrative law judge concludes that the claimant knew or should have known that she had an obligation under the mandatory reporting appropriations of the law to notify management of Windmill Manor immediately and to notify the resident's doctor and family about the event.

The nature of this incident was not a routine matter and the claimant was aware of her responsibility to provide notification, but did not do so. Based upon the previous warning that had been served upon the claimant for a similar incident and the circumstances of the most recent incident of November 19, 2009, the claimant's failure to insure prompt notification of the required parties showed a disregard for the employer's interests and standards of behavior that the employer had a right to expect. Unemployment insurance benefits are withheld.

**DECISION:**

The representative's decision dated December 9, 2009, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, providing that she is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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