

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GLENDAM LUCE**  
Claimant

**APPEAL NO. 12A-UI-06828-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**OC: 05/13/12  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated June 6, 2012, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on July 20, 2012. The parties were properly notified about the hearing. Gerald Luce, participated in the hearing with the claimant. Bill Stasek participated in the hearing on behalf of the employer with a witness, Casey Stephens.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full-time as a certified nursing assistant from December 1996 to May 16, 2012. She had received a coaching on February 26, 2009, for allowing a resident to slip to the floor and a written warning on May 18, 2009, for pushing a resident in a wheelchair without foot pads in violation of safety rules. She received a written warning on February 26, 2011, for neglecting to toilet a resident. She received a final written warning on June 21, 2011, for failing to properly clean a resident.

On May 15, the claimant was responsible for putting a resident to bed and putting an alarm on the resident to monitor the resident to make sure the resident did not get out of bed. The claimant neglected to put the alarm on the resident, which resulted in the resident falling in her room.

On May 16, 2012, the claimant and another CNA left a resident who was sitting in the dining hall unattended. The claimant was informed and understood that this resident was not supposed to be left unattended. The CNA working with the claimant insisted that they take care of another resident first despite the claimant's telling her that the resident should not have been left alone. When the claimant returned to the dining hall, the resident had fallen out of the chair.

On May 17, 2012, the employer discharged the claimant for her conduct on May 15 and 16 and for her past history of discipline for safety and health issues.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

On May 16, the claimant knew that the resident could not be left in the dining room unattended. It does not matter that the other CNA pushed her into violating the safety instruction; she should have held her ground and notified a nurse if the CNA insisted on leaving the resident in the dining hall. In light of this violation, her negligence on May 15, and her prior safety issues, the claimant's conduct amounts to a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

**DECISION:**

The unemployment insurance decision dated June 6, 2012, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw