

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANGELA M MORGAN**  
Claimant

**APPEAL NO. 12A-UI-02151-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FIVE STAR QUALITY CARE INC**  
Employer

**OC: 01-22-12**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the February 29, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on April 6, 2012. The claimant did participate and was represented by Toby Gordon, Attorney at Law. The employer did participate through (representative) Brent Fillmore, Administrator; Bekki Hohenthauer, Director of Nursing; Rita Anderson, Housekeeper; Sharon Anliker, Cook; and Tera Young, Cook/dietary aide. Employer's Exhibit One was entered and received into the record.

**ISSUE:**

Was the claimant discharged due to job-connected misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a certified nursing assistant full time beginning July 5, 2003 through January 23, 2012 when she was discharged. The claimant was seen by at least two coworkers treating a resident in an inappropriate manner. On January 22 the claimant was escorting a resident who suffers from dementia into the dining hall to eat. She did not place a gait belt on the resident while making the transport. When they reached the table, the claimant grabbed the resident by the arms, pushed or shoved her down into the chair. The claimant did not stand behind the resident for five minutes waiting for the resident to sit down on her own. The claimant pushed the resident so hard into the chair that her feet came up off the ground and she made an exclamation of surprise when her bottom hit the seat of the chair. The claimant then left the resident at the table. The resident was upset and other coworkers who witnessed the event came over to comfort the resident, who subsequently refused to eat her meal, while another coworker went immediately to the charge nurse to report the event.

The claimant had been given a copy of the employer's policies and procedures and knew that mistreatment of a resident could lead to her discharge.

The witnesses to the event provide a consistent account of what occurred. The witnesses did not plan or conspire to get the claimant discharged. The claimant simply was too rough with the

resident; others witnessed her actions and complained to management. Management made the decision to discharge after reviewing all of the information, including the claimant's version of events.

**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 § 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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). It is not unreasonable for the employer to require the certified nurse's aide to treat the residents properly. The Administrative Law Judge is persuaded that the claimant did not have a gait belt on the resident and that she did roughly shove or push the resident down into the chair in the dining hall. The claimant is now denying what two witnesses saw occur in an attempt to obtain unemployment insurance benefits. The Administrative Law Judge is not persuaded that three separate employees all colluded to get the claimant fined so they could get their bingo bonus award back. The claimant simply mistreated the resident and was discharged for doing so. The claimant's actions amount to misconduct sufficient to disqualify the claimant from receipt of unemployment insurance benefits. Benefits are denied.

**DECISION:**

The February 29, 2012 (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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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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