

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELINDA S SALTZMAN
Claimant

APPEAL NO. 11A-UI-00304-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BURLINGTON CARE CENTER INC
Employer

OC: 12/12/10
Claimant: Appellant (2)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Melinda Saltzman, filed an appeal from a decision dated January 5, 2011, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on February 15, 2011. The claimant participated on her own behalf. The employer, Burlington Care Center, did not provide a telephone number where a witness could be contacted and did not participate.

ISSUE:

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

FINDINGS OF FACT:

Melinda Saltzman was employed by Burlington Care Center from July 19 until December 13, 2010 as a full-time CNA. On November 30, 2010, an inspection was being done by federal authorities. On December 13, 2010, Telethia Guiter and Chris Marland informed the claimant she was being discharged. The employer asserted she had done peri-care on a resident improperly while being monitored by the inspector. No details were given to her about what she had done wrong.

The claimant had done the peri-care as she had been taught while taking her certification course. After her date of hire another employee of Burlington Care Center, who was orienting her, indicated the peri-care should be done the same way Ms. Saltzman had been originally taught in class.

The claimant had not received any disciplinary action for any issues during the course of her employment.

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 employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). In the present case the employer did not participate and did not provide any evidence of what the claimant had done incorrectly which caused dismissal. Ms. Saltzman maintained she had done the peri-care as she had been taught and had never been advised by anyone at Burlington Care Center that this facility wanted the care done in another manner. The employer has not rebutted any of the claimant's testimony and has failed to meet its burden of proof. Disqualification may not be imposed.

DECISION:

The representative's decision of January 5, 2011, reference 01, is reversed. Melinda Saltzman is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css