

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**TONYA R MCGUIRE**  
Claimant

**APPEAL 17A-UI-00322-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PINNACLE HEALTH FACILITIES XVII L**  
Employer

**OC: 12/18/16  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the January 9, 2017, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for conduct not in the best interest of her employer. The parties were properly notified of the hearing. A telephone hearing was held on January 31, 2017. The claimant, Tonya R. McGuire, participated. The employer, Pinnacle Health Facilities XVII L, did not register a telephone number at which to be reached and did not participate in the hearing.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as a CNA, from February 17, 2015, until December 20, 2016, when she was discharged for using a restraint on a resident.

On or about December 18, two CNAs with whom claimant was having conflict turned her in for restraining a resident. Claimant admits that she dressed the resident in a particular way to try and prevent her from digging into wounds on her body. However, claimant states this was only done to help the resident. Claimant testified that the nurses in the facility were aware that claimant dressed the resident in this way. Claimant was never told not to do this, and she was never disciplined for doing this. Claimant believes that she was treated more harshly than other employees who have done similar or worse things. For example, claimant testified that a male aide broke a resident's arm when turning her, and this male aide is still employed.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Here, the employer did not participate in the hearing or submit any evidence to show claimant engaged in disqualifying misconduct. Claimant provided unrefuted testimony that she merely dressed the resident to protect her from harming herself. Additionally, it is concerning that claimant was discharged for this incident whereas a male coworker who broke a resident's arm remains employed. There is insufficient evidence to establish claimant was discharged for disqualifying misconduct. Benefits are allowed.

**DECISION:**

The January 9, 2017, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

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