

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

DEBORAH A STARR
2203 - 637TH TR
ALBIA IA 52531

CARE INITIATIVES
c/o JOHNSON & ASSOCIATES
PO BOX 6007
OMAHA NE 68106-6007

Appeal Number: 05A-UI-01720-SWT
OC: 01/16/05 R: 03
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated February 15, 2005, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on March 10, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing. Lynn Corbeil participated in the hearing on behalf of the employer with witnesses, Sandie Juhl and Patti McDonogh. Exhibits One through Eight were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked for the employer as a certified nursing assistant from October 1, 2000, to January 17, 2005. She was informed and understood that under the employer's work rules, residents were to be turned or repositioned every two hours to prevent skin breakdown and were to be checked and changed every two hours as well. The claimant received a verbal

warning for failing to respond to a call light on January 14, 2004. On January 29, 2004, she received a verbal warning for failing to change a resident. She received written warnings on June 29, 2004, failing to shower a resident even though she had signed a document indicating that she had and for failing to change a resident. On December 14, 2004, the director of nursing warned the claimant about failing to thoroughly clean a resident's face.

On January 10, 2005, the claimant was scheduled to work from 6:00 a.m. to 2:00 p.m. She was responsible for caring for 20 residents in the hall to which she was assigned. The claimant neglected to turn two of the residents after getting them up at the beginning of her shift. The claimant failed to turn the residents because she was busy with her other work that day.

On January 17, 2005, the employer discharged the claimant for repeated failure to follow the employer's rules in caring for residents, with the last incident being the incident on January 10, 2005.

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.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

While the evidence does not establish that the final incident was willful, based on the claimant's past conduct and discipline, her conduct was negligent and her repeated negligence was a 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 February 15, 2005, 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.

saw/sc