

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERICA SMITH
Claimant

APPEAL NO: 09A-UI-11845-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 07-19-09
Claimant: Appellant (1)

Section 96.5-2-a –Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 11, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 15, 2009. The claimant participated in the hearing with Melissa Williams. Ruth Van Gelde, DON; Luann Modlin, Administrator; Nancy Tieskotter, Licensed Practical Nurse Supervisor; Jennifer Leeper, Registered Nurse; and Lynn Corbeil, Employer Representative, participated in the hearing on behalf of the employer. Employer's Exhibits One through Six were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-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 full-time CNA for Care Initiatives from February 20, 2007 through July 20, 2009. She was discharged for failure to follow directives, which compromised the safety of three residents. The claimant received a final warning June 12, 2009, for refusing to provide the state surveyor and the DON with the list of cares performed on a resident. On July 15, 2009, the claimant failed to follow directives. She failed to change two incontinent residents' briefs as directed and failed to change and/or reposition a third resident every two hours as directed. The employer marked the residents' briefs to confirm they had been changed but the residents remained in their soiled briefs for several hours. The third resident had not been moved for over four hours. The claimant had an assignment sheet to check when she completed each of her duties. The DON asked her why she had not taken care of the residents and the claimant said she did not have enough help, then turned around and walked away. The employer called her back and again asked her why she had not done her duties and the claimant continued to tell the employer there was not enough help. The employer told her there was sufficient help according to the census and the claimant stormed away down the hall. The employer suspended the claimant February 15, 2009, and discharged her February 20, 2009.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for job-related misconduct.

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 proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The claimant was on a final warning when she failed to follow the employer's directives, thereby jeopardizing the safety and welfare of three residents. Repeated failure to follow an employer's instructions in the performance of duties is misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Therefore, benefits are denied.

DECISION:

The August 11, 2009, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs