

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HELEN K HORTON
Claimant

APPEAL NO. 07A-UI-05843-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HOLY SPIRIT RETIREMENT HOME
Employer

OC: 05-13-07 R: 01
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 30, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on June 27, 2007. The claimant did participate. The employer did participate through (representative) Pat Tomscha, Administrator Deb Beringer, Social Worker, and Virgene Bosse, Director of Nursing. Employer's Exhibit One was received.

ISSUE:

Was the claimant discharged for work-related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a CNA full time beginning August 17, 2005 through May 14, 2007 when she was discharged.

On May 11, 2007 two employees, Sue Johnson and Hannah Guerra reported that they overheard the claimant speaking to Resident C, who suffers from Alzheimer's disease in an inappropriate manner. They both reported that they overheard the claimant say to Resident C, "you need to get up, you're not a child, you're a woman." Both Ms. Johnson and Ms. Guerra reported that they could hear the claimant yelling and using an angry tone of voice, even through the closed door. When they reported this information to social worker Deb Beringer, Ms. Beringer reported the incident to administrator Pat Tomscha. Mr. Tomscha interviewed Resident C's husband, Resident T, who was in the room with his wife when the claimant was speaking to her. Resident T confirmed what the two employees had previously reported to Ms. Beringer, that the claimant had spoken to his wife in a harsh, angry tone of voice while telling her to get up that she was not a child. Resident T was upset about the treatment that he had witnessed his wife receive from the claimant.

At one point during the incident, Resident C told the claimant that she wanted to be allowed to speak to her husband Resident T; the claimant would not let Resident C speak to her husband in private.

Prior to this incident the claimant got along well with her coworker Sue Johnson and could think of no reason why Ms. Johnson would report anything that was not true.

The claimant had previously been warned about using a harsh tone of voice when speaking to a resident and had prevented from providing care to that resident. The claimant had received the employer's handbook or policy book which prohibits any employee from speaking to or treating any resident in a disrespectful manner.

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.

The administrative law judge is persuaded that neither the claimant's coworkers nor Resident C's husband would have complained about the claimant's behavior using the exact same words had they not actually heard what they reported. The administrative law judge is persuaded that the claimant's tone of voice was harsh and angry and that telling a resident with Alzheimer's disease to act like a woman not a child is inappropriate. A person suffering from Alzheimer's disease does not intentionally fail to understand requests; she is suffering from the effects of the disease. The claimant had been previously warned about her tone of voice when

speaking to residents. The claimant's action on May 11, that is yelling at a resident in an angry tone of voice constitutes sufficient misconduct to disqualify her from receiving unemployment insurance benefits. Benefits are denied.

DECISION:

The May 30, 2007, 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. Inasmuch as no benefits were claimed or paid, no overpayment applies.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs