

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

<b>DEBORAH A SIGSBEE</b> Claimant  <b>SIOUX CENTER COMMUNITY HOSPITAL</b> Employer	<div>68-0157 (9-06) - 3091078 - EI</div> <div><b>APPEAL NO: 11A-UI-08654-DT</b></div> <div><b>ADMINISTRATIVE LAW JUDGE DECISION</b></div> <div><b>OC: 05/29/11</b> <b>Claimant: Appellant (2)</b></div>
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Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Deborah A. Sigsbee (claimant) appealed a representative's June 21, 2011 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with Sioux Center Community Hospital (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 26, 2011. The claimant participated in the hearing. The employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on June 22, 1988. She worked full time as certified nursing aide (CNA) in the employer's long-term care nursing facility. Her last day of work was May 26, 2011. The employer suspended her that day and discharged her on May 31, 2011. The reason asserted for the discharge was refusing to assist a resident after a prior final warning.

The claimant had been given a final warning for allegedly refusing to assist a resident in about March 2011. The claimant disputed that she had refused to assist a resident on that occasion as well, but after being given the final warning she was attempting her best to avoid situations that could be viewed as refusing to assist.

On May 25 a resident used her call light to summon assistance for the restroom; the claimant responded within about two minutes. When she arrived at the room, the resident indicated that she had already taken care of matters and no longer needed assistance. The claimant understood from the employer that the resident later reported to the employer that the claimant had sat down in a chair in the resident's room, folded her arms, and refused to assist the

resident. The claimant denied these allegations, but rather indicated that after learning the resident had already taken care of matters she apologized for not being able to get there any sooner and left the room. Because the employer accepted that the claimant had refused to assist the resident, the employer discharged the claimant.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is the allegation that she had refused to assist the resident on May 25 after being given a final warning. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant in fact refused to assist the resident on May 25. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

**DECISION:**

The representative's June 21, 2011 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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