

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BARBARA LONG**  
Claimant

**APPEAL NO. 11A-UI-11373-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**OC: 07-24-11**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the August 18, 2011, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 21, 2011. The claimant participated in the hearing. Breanna Sturm, administrator; Jennifer West, DON; and David Williams, employer representative; participated in the hearing on behalf of the employer. Employer's Exhibits One through Four 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 RN Night Charge Nurse for Care Initiatives from March 30, 2010 to July 28, 2011. On July 19, 2011, a CNA notified the claimant that a resident was on the floor. The resident, who was severely mentally challenged, had recently fractured her femur and had surgery during which internal hardware was placed in her leg, and she was sent to the employer's facility to recover. The resident was not injured and the claimant listed the incident on her behaviors chart but did not fill out an incident report, because she was touching her private areas while on the floor and it did not appear she fell. Anytime a resident is on the floor, for any reason, whether she has fallen, simply sat down, or even lost her balance without falling, the charge nurse is required to complete an incident report packet. The CNA mentioned the situation to DON Jennifer West a few days later and Ms. West realized the claimant had not notified her of the incident or completed an incident report when she checked to see if the matter had been documented as required. Ms. West spoke to the CNA about the situation and then she and Administrator Breanna Sturm met with the claimant July 28, 2011, and asked her about the incident. The claimant stated the resident was on the floor "playing with herself" and she assisted the CNA in picking the resident up but did not complete an incident report because she did not consider the incident a fall but rather documented the situation as one of the resident's behaviors. She did not believe she was required to file an incident report because she did not think the resident fell but, instead, thought she sat down on the floor to play and was

happy and content and not in any type of distress. The employer terminated the claimant's employment following the meeting July 28, 2011, in keeping within its progressive disciplinary policy (Employer's Exhibit Four).

The claimant received a verbal warning June 29, 2010, for failure to follow doctor's orders in the administering of medication (Employer's Exhibit One). She received a written warning August 23, 2010, for charting subjectively rather than objectively (Employer's Exhibit Two). She received a final written warning and suspension for two incidents that occurred September 24, 2010. The first situation involved a resident who wanted a cocktail, as was his usual practice. The claimant called Ms. West and was told she needed permission from the resident's doctor and the claimant replied, "Oh well. I already gave it to him anyway." Ms. West told her she needed to call the resident's physician and notify him of the situation but she did not do so. The same evening, the claimant called Ms. West to tell her the facility had not received Tylox from the pharmacy but there was oxycodone and Tylenol so she could combine those two medications to form Tylox. Ms. West told her she could probably do that but she needed to contact the resident's physician. The claimant indicated she understood, but when Ms. West checked the MAR and found the doctor's order for Tylox, she noted that the claimant never notified the physician, transcribed it on the chart, or informed the doctor or family regarding the fact she combined oxycodone and Tylenol to make Tylox before the employer received it from the pharmacy (Employer's Exhibit Three). Final written warnings of a Major Type B nature remain on an employees' progressive disciplinary record for two years while lesser offenses remain on their record for one year.

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

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

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 propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). While the claimant violated the employer's policy regarding any resident being on the floor regardless of the reason, the claimant did not understand she had to complete an incident report under those circumstances when the resident was playing on the floor and got there on her own volition. She considered the situation one of the resident's behaviors, rather than a fall, as the resident was simply sitting on the floor, uninjured, and documented the incident as such. She was not aware her actions violated the employer's policy. The employer had warned the claimant about previous situations, but the claimant had not received any warnings during the last ten months of her employment. Consequently, the administrative law judge must conclude the final incident does not rise to the level of disqualifying job misconduct as that term is defined by Iowa law, because the employer has not established intentional misconduct on the part of the claimant. Therefore, benefits are allowed.

**DECISION:**

The August 18, 2011, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/kjw