

**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**

**BRENDA K HEWITT
314 S MAIN
PO BOX 136
CLARKSVILLE IA 50619**

**SHELL ROCK HEALTHCARE CENTER
920 N CHERRY ST
SHELL ROCK IA 50670**

**Appeal Number: 04A-UI-00672-HT
OC: 12/07/03 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, Brenda Hewitt, filed an appeal from a decision dated January 8, 2004, reference 02. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on February 10, 2004. The claimant participated on her own behalf. The employer, Shell Rock Healthcare Center (Shell Rock), participated by Administrator Betty Oren and Director of Nursing Cheryl Sherburn.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Brenda Hewitt was employed by Shell Rock from October 29, 2001 until December 2, 2003. She was a full-time certified nursing assistant.

The claimant had received two written warnings regarding inappropriate conduct in the work place. The second warning was given for an incident on September 26, 2003, and notified her that her job was in jeopardy if there were any further incidents.

On November 26, 2003, the claimant was in the dining room with a resident and ate food off of the resident's plate. This was seen by two other CNAs who reported the incident to Director of Nursing Cheryl Sherburn. Administrator Betty Oren was then notified and the claimant was suspended pending further investigation. She was notified her job was in jeopardy if the investigation confirmed this breach of policy.

Ms. Oren interviewed the two CNAs, reviewed their written statements, and consulted with other members of management. The claimant was then notified on December 2, 2003, she was discharged.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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).

The claimant had been advised her job was in jeopardy as a result of inappropriate conduct. In spite of the warning she engaged in further inappropriate conduct by eating food served to a resident. This could potentially be interpreted as denying food to a resident, or Medicaid fraud. It is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of January 8, 2004, reference 02, is affirmed. Brenda Hewitt is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount provided she is otherwise eligible.

bgh/kjf