

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEAANN HITCHINGS

Claimant

APPEAL NO: 14A-UI-02168-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA VETERANS

HOME - MARSHALLTOWN

Employer

OC: 02/02/14

Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

LeaAnn Hitchings (claimant) appealed a representative's February 19, 2014 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with Iowa Veterans Home – Marshalltown (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 19, 2014. This appeal was consolidated for hearing with one related appeal, 14A-UI-02167-DT, involving claimant Mindy S. Niedermann. Both claimants participated in the hearing; they were represented by Bethany Currie, attorney at law. A review of the Appeals Section's conference call system indicates that 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 parties, 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?

OUTCOME:

Reversed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on or about June 23, 1997. She worked full time as a resident treatment worker (RTW) on the third shift. Her last day of work was the shift from the evening of January 29 into the morning of January 30, 2014. The employer placed her on paid leave as of the night of January 30 and discharged her on February 2, 2014. The reason asserted for the discharge was alleged abuse or neglect of a resident on the night of January 24.

On the night of January 24 the claimant and Niedermann were the only RTWs on duty, with a licensed practical nurse (LPN) and a registered nurse (RN), responsible for 57 residents. The two RTWs were the ones primarily responsible for responding to all alarms and call lights. That night was extremely busy. There was one resident whose care plan called for him to be repositioned every two hours. The resident weighed 400 pounds and it took two RTWs a substantial amount of time to move him. While frequently this resident was restless, on this particular evening he was sleeping soundly and appeared comfortable. From past experience the RTWs knew that if they moved him while he was sleeping, he would become restless and unsettled the rest of the night. The two RTWs determined that unless he was awake, they would not reposition him, but they continued to check him every two hours. The LPN on duty was aware of how they were handling the resident that evening, and did not object.

When the employer became aware that the RTWs had not repositioned the resident as required by his care plan, the employer discharged the claimant. The claimant had not previously been given any disciplinary warnings regarding any conduct.

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 her failure to reposition the resident as required by the care plan. While this may have been a mistake, under the circumstances of this case, the claimant's decision not to disturb and reposition the resident was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. 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 February 19, 2014 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.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css