

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTIE G BARNES
Claimant

APPEAL NO. 10A-UI-08664-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRESTVIEW ACRES INC
Employer

OC: 11-15-09
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 9, 2010, reference 06, decision that denied benefits. After due notice was issued, a hearing was held on August 4, 2010. The claimant did participate. The employer did participate through (representative) Michelle Otten, Director of Nursing, Mary Quigley, Administrator and Sandra Hanson, Physical Therapist.

ISSUE:

Was the claimant discharged due to job related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a certified nurse's aide full time beginning December 7, 2009 through May 14, 2010 when she was discharged. On May 12 the claimant sought assistance in moving a resident from her bed to a wheelchair from Kelly Straight and Sandra Hanson, coworkers who were walking down the hallway. When Ms. Hanson and Ms. Straight entered the resident's room to assist the claimant they saw the claimant grab the resident's arm in a rough manner, shove her arm back into her shirt while roughly pulling the shirt down. The claimant then kicked near the resident while saying something along the lines of, "I could just kick her." The claimant then said "if I ever get dementia, just shoot me." After assisting the claimant both Ms. Hanson and Ms. Straight complained to the director about the claimant's treatment of the resident. Both Ms. Hanson and Ms. Straight submitted statements to the employer that indicated they had both seen the claimant act in the manner described. The claimant denied mistreating the resident.

The claimant had been previously disciplined on more than one occasion for using profanity when speaking to a resident and for telling a resident she was not going to "have any of that crybaby stuff."

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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990).

The administrative law judge is persuaded that the claimant acted in the manner described by the two witnesses. There was no reason for the witnesses to fabricate the events and both corroborated what they had seen. The claimant's actions, in light of her previous discipline for similar conduct are conduct not in the employer's best interests and do constitute sufficient misconduct to support denial of unemployment insurance benefits. Benefits are denied.

DECISION:

The June 9, 2010 (reference 06) 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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs