

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

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CARE INITIATIVES  
c/o JOHNSON & ASSOCIATES  
PO BOX 6007  
OMAHA NE 68106-6007

Appeal Number: 04A-UI-08803-SWT  
OC: 07/18/04 R: 01  
Claimant: Respondent (2)

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge  
Section 96.3-7 - Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated August 10, 2004, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on September 9, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing. Roxanne Bekaert participated in the hearing on behalf of the employer with witnesses, Joan Stodden and Ken Nelson. Exhibits One through Four were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked full time for the employer as a certified nursing assistant (CNA) from August 29, 1984 to July 21, 2004. The claimant was informed and understood that under the employer's work rules, employees could be discharged for violating the employer's health and

safety rules. The claimant had received a written warning on December 23, 2003, for deliberately failing to remove a lift sheet from a resident, which violated the employer's policies. She received a final warning on February 26, 2004, for failing to replace a pad after a resident had soiled the pad. She was told that further violations would result in her termination.

On July 15, 2004, the claimant reported to the employer that a resident had lost her balance while she was moving the resident and she had to lower the resident to the floor. The resident was not injured by this. Later, another resident reported to the employer that the resident in question had fallen down.

One of the employer's safety rules requires that a gait belt be used in moving a resident if a gait belt is required in the resident's care plan. About 90 percent of the employer's residents require gait belts. The claimant had been trained repeatedly about the necessity of using a gait belt in moving residents. On July 21, 2004, the claimant did not consult a resident's care plan and moved a resident who required a gait belt without the gait belt. She was observed doing this by her supervisor. This could have caused an injury to the resident. As a result of this incident and the incident on July 15, 2004, the employer discharged the claimant on July 21, 2004.

The claimant filed for and received a total of \$872.00 in unemployment insurance benefits for the weeks between July 18 and August 14, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. The claimant admitted that she had been disciplined in the past and knew her job was in jeopardy. Her explanation that she was not familiar with the resident on July 21, 2004, provides no excuse to the claimant. She knew that 90 percent of the residents required gait belts and that she was required to consult the care plan for the resident before moving her. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

As a result of this decision, the claimant is disqualified from receiving unemployment insurance benefits and was overpaid \$872.00 in unemployment insurance benefits for the weeks between July 18 and August 14, 2004.

#### DECISION:

The unemployment insurance decision dated August 10, 2004, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant was overpaid \$872.00 in unemployment insurance benefits, which must be repaid.

saw/b