

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BERNICE SHORTER
Claimant

APPEAL NO: 06A-UI-08743-ET

**ADMINISTRATIVE LAW JUDGE
AMENDED DECISION**

CARE INITIATIVES
Employer

**OC: 08-06-06 R: 03
Claimant: Appellant (1)**

Section 96 5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 29, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 18, 2006. The claimant participated in the hearing. Alan Blakestad, Administrator; Cindy Klenzman, Director of Nursing; Joanie Nelson, LPN; and Sandy Fitch, Employer Representative, participated in the hearing on behalf of the employer. Employer's Exhibit One was 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 CNA for Care Initiatives from June 28, 1999 to August 3, 2006. The claimant's job responsibilities included providing water pitchers to residents and changing linen and other soiled laundry. On August 3, 2006, the claimant distributed water pitchers without lids to residents in violation of the infection control policy. There were signs posted on the cart as well as at other locations in the facility reminding employees that water pitchers must have the lids on when used. Also on that date the claimant helped a resident change from her soiled dress into a clean one and left the dirty dress on the floor. There was feces on the bathroom floor covered with a paper towel and the resident complained the claimant jerked her up and yanked her around. The claimant testified she helped the resident change her dress and left the dirty linen on the floor. She denied handling the resident in a rough manner or that she saw any feces on the bathroom floor but did say she washed her hands before leaving the room to distribute the water. Upon learning of the situation the employer terminated the claimant's employment for violations of the infection control policy. The claimant was aware of the policy through orientation and in-service training.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to disqualifying job misconduct.

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 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). In this case the claimant was fully aware of the requirement that all water pitchers needed lids but chose to ignore that rule. Additionally, when she changed the resident's dress she dropped the dirty dress on the floor and it appears she had to walk right by the feces to wash her hands but did nothing to clean it up. The claimant admits she knew the rule regarding the water pitchers and knew she

should not have dropped the dirty dress on the floor but did so anyway. Consequently, the administrative law judge concludes the claimant's actions constitute disqualifying job misconduct as defined by Iowa law. Therefore, benefits are denied.

DECISION:

The August 29, 2006, reference 01, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/cs/cs