

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RONDA L HOWELL**  
Claimant

**APPEAL NO. 08A-UI-04799-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**OC: 04/20/08 R: 01  
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

Care Initiatives (employer) appealed a representative's May 9, 2008 decision (reference 01) that concluded Ronda L. Howell (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 6, 2008. The claimant participated in the hearing. Gordon Peterson, a representative with TALX, appeared on the employer's behalf. Kelly Jimerson, the administrator, and Michelle Gifford, the director of nursing, appeared as witnesses for the employer. During the hearing, Employer Exhibits One through Five were offered and admitted as evidence. 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:**

Did the employer discharge the claimant for work-connected misconduct?

**FINDINGS OF FACT:**

On November 15, 2002, the claimant started working for the employer as a full-time registered nurse. The claimant understood the employer's documentation and compliance policies in that all reports needed to be accurate and supervisors were not allowed to ask or coerce employees to report inaccurate information. (Employer Exhibits Four and Five.) Prior to April 13, 2008, the claimant's job was not in jeopardy.

On April 13, an aide, Heather Burg, found a resident on the floor. She reported this incident to the claimant at 5:30 a.m. When the claimant and Burg completed the paperwork, the claimant asked Burg various questions about what time she had last seen the resident prior to 5:30 a.m. Burg and another aide, Kim Straw, concluded the claimant had been trying to coerce Burg to report Burg had seen the resident in his room after 4:00 or 4:20 a.m., the time Burg remembered seeing the resident prior to 5:30 a.m. Burg left a note for Jimerson to talk to her because she felt uncomfortable regarding her conversation with the claimant.

Later on April 13, Jimerson talked to Burg about the conversation the claimant had with her when she completed the incident report on the resident. Jimerson understood that Burg felt the claimant wanted her to record the last time she saw the resident was at 5:20 a.m. when in fact she had not seen the resident since 4:00 or 4:20 a.m. before she found on the floor at 5:30 a.m. (Employer Exhibit One.) Straw also reported that the claimant had tried to coerce Burg to report an inaccurate time asked about the resident's medication because his bed was in an upright position. (Employer Exhibit One.) The claimant had not given the resident any medication that morning.

When the employer talked to the claimant, she denied she tried to get Burg to write down incorrect information on the incident report. The claimant instead tried to jog Burg's memory about the last time she saw the resident before she found him on the floor.

On April 20, 2008, the employer discharged the claimant after concluding she attempted to coerce an aide to record inaccurate information on an incident report.

### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. 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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer had the advantage of personally talking to all the people involved in this incident. As a result of its investigation, the employer concluded the claimant violated the employer's documentation and corporate compliance policy. At the hearing, the employer relied on hearsay information, because the employees who reported the problem did not testify. Since the claimant's testimony is credible, more weight must be given to the claimant's testimony than the employer's reliance on unsupported hearsay information. A preponderance of the evidence establishes that the claimant did not attempt to coerce an employee to report inaccurate information on an incident report. The claimant only tried to help an aide pinpoint the time she had seen the resident before finding a resident on the floor at 5:30 a.m. The assertion that the claimant wanted a time within a two-hour time frame is without merit because 4:00 or 4:15 a.m. would have been within the two-hour time frame. Also, since the claimant did not give the resident any medication that morning, an employee who did not come forward must have given the resident medication and left the resident's bed in an upright position. The facts do not

establish that the claimant committed work-connected misconduct on April 13, 2008. Therefore, she is qualified to receive benefits as of April 20, 2008.

**DECISION:**

The representative's May 9, 2008 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of April 20, 2008, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw