

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SILVIA R URANGA
Claimant

APPEAL NO. 10A-UI-05564-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

**Original Claim: 02/28/10
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge
871 IAC 24.32 – Definition of Misconduct

STATEMENT OF THE CASE:

Silvia R Uranga filed a timely appeal from an unemployment insurance decision dated April 8, 2010, reference 01, that disqualified her for benefits. After due notice was issued, a telephone hearing was held May 25, 2010, with Ms. Uranga participating. Lynn Corbeil, attorney at law with TALX UC eXpress, appeared on behalf of the employer, Care Initiatives. Tammy Kappel, Tammy Bowser, Tammy Craggs, and LaVonne Edwards testified. Employer Exhibits One and Two were admitted into evidence.

ISSUE:

Was the claimant discharged for disqualifying misconduct?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Silvia R. Uranga was employed by Care Initiatives from March 5, 2008, until she was discharged March 4, 2010. She last worked as a certified nursing assistant. The incident leading to discharge occurred on March 4, 2010. Ms. Uranga and one other CNA were responsible for the care of 26 residents at a nursing home owned and operated by the employer. Ms. Uranga began working at 6:00 a.m. At around 1:00 p.m., she approached Assistant Director of Nursing Tammy Bowser to request assistance, noting that she had not been able to provide cares for one of the residents at all during the day. Although Ms. Uranga had not earlier spoken to the charge nurse, she had made it known in the past that she felt that the staffing levels were such that it was difficult for the CNAs to give proper care to the residents.

Rather than provide additional assistance, Ms. Bowser took Ms. Uranga to Director of Nursing Tammy Kappel's office, where Ms. Uranga was discharged.

REASONING AND CONCLUSIONS OF LAW:

The propriety of the employer's decision to discharge Ms. Uranga is not at issue in this case. The issue before the administrative law judge is whether the reason for discharge amounted to misconduct in connection with the employment as defined in Iowa law. For the reasons that follow, the administrative law judge concludes that the evidence does not establish willful, careless, or negligent 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.

The employer has the burden of proof. See Iowa Code section 96.6-2. The essential facts of the case are not greatly in dispute. Ms. Uranga approached the assistant director of nursing, acknowledging that she had not been able to assist one of the residents. The employer acknowledged that two CNAs were responsible for the care of 26 residents. The employer did not contradict the claimant's testimony concerning the workload, acknowledging that the ratio of residents to CNAs made it an ordinary day.

The evidence does not establish that Ms. Uranga willfully and deliberately failed to offer care to the resident. It does not establish an act of negligence or repeated acts of carelessness. It does establish that the claimant's efforts on the day in question were insufficient in the eyes of the employer. An isolated instance of poor performance is not sufficient to establish misconduct. Benefits are allowed.

DECISION:

The unemployment insurance decision dated April 8, 2010, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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