

**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**

**KAREN LONEY
1214 RANDOLPH ST
WATERLOO IA 50702**

**CEDAR FALLS LUTHERAN HOME
FOR THE AGED
7511 UNIVERSITY AVE
CEDAR FALLS IA 50613**

**Appeal Number: 04A-UI-04052-ET
OC 03-14-04 R 03
Claimant: Appellant (1)**

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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 2, 2004, 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 May 4, 2004. The claimant participated in the hearing. Shelleen Hatch, Director of Human Resources and Linda Larson, Assistant Director of Nurses, participated in the hearing on behalf of the employer.

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 Cedar Falls Lutheran Home for the Aged from May 2, 1995 to March 17, 2004. On Saturday, March 13, 2004, a resident put his call light on

because he needed to use the restroom. The claimant asked another CNA if she had put the resident on the toilet earlier that morning and she said yes so the claimant went to his room on the way to another call and told him that because he had been on the toilet twice without going that he would have to wait awhile. The claimant was gone approximately ten minutes and during that time the resident had an incontinent episode of stool. He put his call light on again and when the claimant returned the resident said he had a b.m. because he "couldn't wait any longer." The claimant lifted his blankets and stated "That's a hell of a mess" and he stated she "should have expected it because (he) couldn't wait all day." The claimant left the room and went to the end of the hall where two CNA's were doing an activity with seven residents and said, "Jack just shit his pants." She then returned to the resident's room to clean him and the resident told the employer he "could tell she was mad she had to clean me up because she was flinging my covers and throwing things," was rough when she rolled him and did not speak to him while cleaning him. As she left the room the claimant said, "You better not do that again" and the resident said he would if he had to. The resident told the employer that most of the employees are "really good" about toileting him but the claimant often argued with him and did not want to take him to use the restroom. Assistant Director of Nursing Linda Larson received two written complaints about the incident when she arrived for work Monday, March 15, 2004. She interviewed staff and the resident and then met with the claimant and Director of Human Resources Shelleen Hatch. The claimant said she had someone else on the toilet at the time but could not remember who it was and did not tell the resident that or ask another CNA to help her. She admitted going down the hall and telling the other CNA's and seven residents that "Jack shit his pants" but states she was just repeating what he said. She denied saying, "That's a hell of a mess" and testified she said, "I made a mess" while cleaning him up. She denied "flinging his covers," handling him in a rough manner or stating he "better not do that again." The claimant was not scheduled to work March 16 or 17, 2004. The employer terminated the claimant's employment March 17, 2004.

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 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 job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Although the claimant's decision to tell the resident he had to wait to use the restroom while she responded to another resident might be attributed to an isolated incident of poor judgment, the remainder of her actions in dealing with the resident and the ensuing situation, exceeded poor judgment. The claimant's statement, "That's a hell of a mess," her actions in flinging the residents covers around and handling him in a rough manner and then saying he "better not do it again" all demonstrate a failure on the part of the claimant to treat the resident with the dignity, kindness or respect that he deserved. The claimant's most egregious action, however, was her announcement to the two CNA's and seven residents in the hallway that the resident just "shit his pants." Regardless of whether the resident made that statement to the claimant as his caregiver in the privacy of his room, the claimant knew that a resident who soiled himself would be embarrassed and humiliated and would not expect his caretaker to compound those feelings by telling several others about the incident. The claimant's conduct March 13, 2004, demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. Consequently, the administrative law judge concludes the employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

DECISION:

The April 2, 2004, 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.

je/kjf