

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHERIE L SPRUELL**  
Claimant

**APPEAL NO. 06A-UI-11515-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**OC: 10/29/06 R: 03**  
**Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Cherie Spruell, filed an appeal from a decision dated November 22, 2006, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on December 18, 2006. The claimant participated on her own behalf. The claimant was using a cell phone, contrary to recommendation on the notice, and at 12:02 p.m. she lost the connection and, therefore, was not able to offer testimony. The employer, Care Initiatives, participated by Administrator Amy Johnson and Director of Nursing (DON) Kristin McAdam and was represented by TALX in the person of Jessica Meyer. Exhibits One, Two, Three, Four, Five, and Six were admitted into the record.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Cherie Spruell was employed by Care Initiatives from July 12 until October 25, 2006. She was a full-time certified nursing assistant (CNA). The claimant had received a verbal warning August 5, 2006, and written warnings on October 11 and 16, 2006, for performance issues. The second written warning did advise her that her job could be in jeopardy if there were any further incidents.

In October 2006 the facility was notified it was deficient in providing peri-care to its residents. Peri-care is cleansing and changing of a resident after toileting or incontinence. All CNA's were advised there would be audits by nurses of their peri-cares and training at an in-service on October 16, 2006. Ms. Spruell was audited on October 11 and 13, 2006, by two different nurses, and found to be deficient in technique, providing privacy and dignity to the resident, failing to wash her hands and use clean gloves as required, and inappropriate disposal of the soiled materials. On each occasion, the nurses directed and advised the claimant during the procedures and discussed her overall performance and reviewed the checklist with her afterward.

On October 16, 2006, there was an in-service for all CNA's which covered not only the written policies but a demonstration by DON Kristin McAdams using a mannequin to show the proper procedures. Ms. Spruell had a third audit on October 25, 2006, which she also failed for the same reasons she failed the prior audits.

The nurse doing the audit notified Ms. McAdams, who consulted with Administrator Amy Johnson. The facility had to have 100 percent proficiency in these cares by November 2, 2006, as mandated by the Iowa Department of Inspections and Appeals, and the claimant had failed to improve her peri-care performance after three audits and re-training. She was discharged after receiving her third warning.

#### **REASONING AND CONCLUSIONS OF 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.

The claimant had been advised her job was in jeopardy as a result of her poor work performance. She had been audited, advised, retrained, and supervised in providing the essential peri-cares for the residents and still did not follow the required techniques to ensure the residents were not exposed to embarrassment, infection, and disease. This is conduct not in the best interests of the employer and the claimant is disqualified.

**DECISION:**

The representative's decision of November 22, 2006, reference 01, is affirmed. Cherie Spruell is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/kjw