

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

VICKI FONTENOT
521 W ARTHUR ST
LAURENS IA 50554-1005

GOOD SAMARITAN SOCIETY INC
c/o FRICK UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

AMENDED

Appeal Number: 06A-UI-03295-BT
OC: 02/19/06 R: 01
Claimant: Respondent (2)

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 for Misconduct
Section 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Good Samaritan Society, Inc. (employer) appealed an unemployment insurance decision dated March 10, 2006, reference 02, which held that Vicki Fontenot (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 13, 2006. The hearing was originally held on April 10, 2006, but, due to a clerical error, the claimant did not participate. The hearing was rescheduled and a new hearing was held with the claimant's participation and the employer's participation through Greg Krzmarzick, Administrator, and Diane Meier, Director of Nursing. Employer's Exhibit One was admitted into evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time licensed practical nurse from November 27, 1987 through February 20, 2006. She was terminated for a repeated failure to provide appropriate care and treatment to residents. Shortly after the new administrator was hired, he prepared a memorandum and met with the claimant, addressing a problem regarding professional demeanor and inappropriate comments. The employer discussed the issue with the claimant and the claimant signed the letter. This meeting was held at some point after March 2005 but before May 2005. Subsequently, the claimant received a written warning for mistreatment of a resident on the night of May 31, 2005. The resident reported that the claimant lectured him in a loud tone, did not meet his needs and made demeaning comments concerning his personal belongings. A final warning was then issued on August 22, 2005, for the repeated problem concerning inappropriate treatment of others. The claimant made inconsiderate and demeaning comments concerning her co-workers and the functioning of the employer's facility. At that time, the claimant requested the previous written warning be reduced to a verbal warning, which was approved and completed on August 29, 2005. This reduction did not affect or alter the final warning, which was still in effect.

The incident prompting the claimant's discharge occurred on the night of February 11, 2006. A male resident who was new to the facility advised the claimant he needed to go to the bathroom to have a bowel movement. His care plan provided for his transfer with the assistance of two staff members, a gait belt and/or a walker. The claimant did not assist the resident to the toilet and gave him a bed pan instead. The resident's care plan did not provide for his use of a bed pan and he complained that when he told the claimant he could not use the bed pan, she and her co-worker simply left the room and turned off the light. The resident subsequently attempted to transfer himself to the restroom and pulled his catheter in the process. The resident's catheter had blood in it and the claimant did not notify the doctor of this fact nor did she document the problem in the resident's chart. After the resident reported the incident to the employer on the following day, the director of nurses questioned the claimant and placed her on suspension. The claimant began a previously scheduled vacation on February 14, 2006 and was called in on February 20, 2006, when she was discharged.

The claimant filed a claim for unemployment insurance benefits effective February 19, 2006 and has received benefits after the separation from employment in the amount of \$1,296.00.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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 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 claimant was discharged for repeated unprofessional behavior and inappropriate treatment of residents. While she contends she did not transfer the resident to the restroom on February 11, 2006, because of concern for his safety, the evidence demonstrates that her actions were more detrimental to the resident. The claimant testified, "There was just the two of us and I knew if we got him up, one of us would have to stay with him also and there would only be one person left on the floor." She claimed the resident did not have a walker and denied there were any that she could have used, but the employer testified there were numerous walkers in a storage room. The claimant believes that her longevity with the employer should be taken into consideration, but that longevity, or experience resulting from that longevity, could also be used to hold the claimant to a higher standard, which she failed to meet. The claimant's conduct was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department

in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated March 10, 2006, reference 02, is reversed. The claimant is not eligible to receive unemployment insurance benefits, because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,296.00. However, this overpayment has already been set up per reference 01, appeal number 06A-UI-03294-BT.

sdb/kkf/tjc