

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LORI L UNDERWOOD
Claimant

APPEAL NO: 07A-UI-03855-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 03/25/07 R: 03
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Lori L. Underwood (employer) appealed a representative's April 11, 2007 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Care Initiatives (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 1, 2007. The claimant participated in the hearing. Mike Sloan of TALX Employer Services appeared on the employer's behalf and presented testimony from two witnesses, Carrie Robins and Selina Selsor. During the hearing, Exhibit A-1 was entered into 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:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on November 28, 2005. She worked full time as a certified nursing aide (CNA) at the employer's Osceola, Iowa skilled long-term care nursing facility. Her last day of work was March 16, 2007. The employer discharged her on that date. The stated reason for the discharge was committing a second major offense within 24 months.

On September 14, 2006 the claimant was given a first major offense warning for arguing with her supervisor and telling the supervisor to "kiss my butt." The warning advised the claimant that it was a final warning and that if there was another occurrence under the "major type B" category the result would be termination.

On March 11, 2007 the claimant was assigned to the Alzheimer's unit in which she was the only staff assigned to the 15 residents; a charge nurse was stationed at an adjoining unit and would circulate through the Alzheimer's unit as necessary. At approximately 1:15 p.m. the claimant came through the normally closed doors which separated the Alzheimer's unit from the neighboring unit. She went to a cart near the nurses' station about 50 feet away from the door and grabbed some spoons, then returned to the Alzheimer's unit.

The employer's policies of which the claimant was on notice classify leaving a duty station without authorization or without obtaining other coverage as a major type B offense. The claimant had also attended an in-service education on August 24, 2006 in which the necessity of never leaving the Alzheimer's unit unattended even briefly was emphasized. The claimant had discovered she needed a spoon in order to feed a resident who was hungry for a snack but she had not attempted to contact the charge nurse or another CNA working elsewhere in the facility to bring her spoons.

REASONING AND CONCLUSIONS OF LAW:

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. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

Iowa Code § 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 focus of the definition of misconduct is on acts or omissions by a claimant that “rise to the level of being deliberate, intentional or culpable.” Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer’s interest, such as found in:
 - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
 - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
 - a. Manifest equal culpability, wrongful intent or evil design; or
 - b. Show an intentional and substantial disregard of:
 1. The employer’s interest, or
 2. The employee’s duties and obligations to the employer.

Given the claimant’s prior major offense warning and her training, the claimant’s leaving the Alzheimer’s unit unattended even briefly and even for an underlying good cause shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer’s interests and of the employee’s duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative’s April 11, 2007 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of March 16, 2007. This disqualification continues until the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer’s account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs