

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 L LONG  
1217 – 3<sup>RD</sup> ST #9  
CAMANCHE IA 52730

COMMUNITY CARE INC  
108 E INDUSTRIAL ST  
DE WITT IA 52742

Appeal Number: 05A-UI-05868-H2T  
OC: 05-01-05 R: 04  
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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 27, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on June 21, 2005. The claimant did participate. The employer did participate through: Carol Wells, Human Resources Director; (representative) LeAnn Moskowitz, Associate Director; Teresa Grimm, Home Care Administrator; and Carrie Plymessenger, HCBS Supervisor. Claimant's Exhibit A was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a living assistant part time beginning February 27, 2002, through May 27, 2005, when she was discharged. The claimant sustained a work-related injury on

January 6, 2005 and March 16, 2005. She was provided with medical treatment after both incidents. The company doctor released the claimant to return to work full time, full duty without restrictions on April 14, 2005. She was scheduled to work on April 15, 21, 25, 26, 28, 29 and 30. The claimant did not work any of her scheduled days notwithstanding the fact that she had been released to return to work without work restrictions. The claimant told the employer that she would need job modifications and would have work restrictions, yet she has failed to provide any medical opinion that she is in need of such accommodations or modifications.

After her fact-finding interview, the claimant's lawyer advised her to return to work. The claimant had previously told the employer that she would not be able to work on May 26 due to her pain and injury, even though she had no doctor's excuse to remove her from work that day. The employer did not expect the claimant to show up for work on May 26, as she had called earlier and said she would not work. The claimant went to work with a client on May 26 without telling the employer she was returning to work. The employer discharged her on May 27 for her failure to return to work from April 14 until May 26 notwithstanding her physician release of her to do so.

#### 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 claimant was required to return to work on April 14 when her doctor released her without restrictions. The claimant chose not to return to work when her doctor opined she was able to do so. An employer has a right to expect employees to conduct themselves in a certain manner. The claimant disregarded the employer's rights by failing to return to work. The claimant did return for one day and was able to work, evidencing her ability to perform the required duties if she chose to do so. The claimant's disregard of the employer's rights and interests is misconduct. As such, the claimant is not eligible to receive unemployment insurance benefits.

DECISION:

The May 27, 2005, 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.

tkh/kjw