

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONNA M HOVICK
Claimant

APPEAL NO. 10A-UI-06161-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOOD SAMARITAN SOCIETY INC
Employer

OC: 03/14/10
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Good Samaritan Society, Inc. filed a timely appeal from an unemployment insurance decision dated April 13, 2010, reference 01, that allowed benefits to Donna M. Hovick. After due notice was issued, a telephone hearing was held June 29, 2010 with Ms. Hovick participating and being represented by paralegal, Valerie Vaultz. Human Resources Director Denise Lael participated for the employer. Employer Exhibit One was admitted into evidence.

ISSUE:

Was the claimant discharged for misconduct in connection with her employment?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Donna M. Hovick was employed as a certified nursing assistant by Good Samaritan Society, Inc. from February 16, 2006 until she was suspended pending investigation on February 3, 2010 and then discharged on February 19, 2010. The discharge was based on reports made by Ms. Hovick's co-workers that indicated she had not answered an alarm, had not answered a call light, had denied a resident a drink of water, had told a resident on her way to the bathroom that she must hurry, that she had made another resident lie down, that she had failed to use a gait belt on one occasion and that she had not been properly gloved while giving peri cares. Ms. Hovick had, in fact, told a resident to hurry while going to the bathroom because she, Ms. Hovick, had rounds to make. She had on one occasion gloved only one hand while she and a co-worker gave peri cares to an incontinent resident. The resident had been given a drink of water. The resident had initially asked for pop. Pop was offered to her, but not a brand that she wanted. Two alarms had gone off simultaneously. Ms. Hovick answered one. When she responded to the second, another staff member was already in the room. She had assisted a resident lie down because the resident's balance was unsteady. The resident did not complain. Ms. Hovick had not deliberately failed to answer any lights.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the record establishes that the claimant was discharged for misconduct in connection with her employment. It does not.

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 employer has the burden of proof. See Iowa Code section 96.6-2. While the Iowa Administrative Code allows hearsay evidence that would be inadmissible in a civil trial in the Iowa District Court, the administrative law judge is not required to give as much weight to that evidence as the evidence of firsthand witnesses. The employer provided no firsthand witnesses. It provided no written statements from people who had made the complaints about Ms. Hovick. Ms. Hovick admitted some but not all of the allegations made against her. While these offenses were serious enough for the employer to justify discharge, they do not appear to be so serious or numerous as to meet the definition of misconduct set forth above. Benefits are allowed.

DECISION:

The unemployment insurance decision dated April 13, 2010, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs