

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

RITA K GRAVES
1809 W MAIN ST
MARSHALLTOWN IA 50158

CARE INITIATIVES
c/o JOHNSON AND ASSOCIATES
PO BOX 6007
OMAHA NE 68106-0007

Appeal Number: 04A-UI-06387-HT
CO: 05/16/04 R: 02
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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant, Rita Graves, filed an appeal from a decision dated June 1, 2004, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on July 6, 2004. The claimant participated on her own behalf. The employer, Care Initiatives, participated by Director of Nursing Steve Orazem, Assistant Director of Nursing Sherry Ellis, and Nursing Assistant Terry Stephenson and was represented by Johnson and Associates in the person of Lynn Corbeil. Exhibit One was admitted into the record.

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: Rita Graves was employed by Care Initiatives from July 10, 2003 until May 18, 2004. She was a full-time certified nursing assistant. During the course of her employment the claimant received eight written warnings, six of which dealt with inappropriate conduct toward residents and failure to perform her duties as required. The final written warning was given on May 7, 2004, and indicated it was a final warning and further incidents would lead to further disciplinary action.

On May 17, 2004, another nursing assistant reported to the charge nurse that a resident had complained about Ms. Graves. The resident had put on her call light so she could be taken off the toilet. The claimant came in, turned off the call light and said she would be right back to help the resident. However, more than 20 minutes later the resident still had not been helped off the toilet and put on her call light again. It is not allowed for a staff member to turn off a resident's call light until the resident's needs had been dealt with.

The charge nurse reported the incident to Director of Nursing Steve Orazem who talked to the claimant before she went home that day. During the remainder of the day he interviewed the other nursing assistant, the charge nurse and the resident. The resident was alert, oriented and competent, and identified the claimant by name. Ms. Graves was then discharged on May 18, 2004, when the investigation was concluded.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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 had been advised her job was in jeopardy as a result of her failure to attend to the residents as required and to perform her job duties. The record has sufficient evidence that the claimant turned off a resident's call light without having seen to the resident's needs. This is a violation of policy and jeopardized the health and safety of the resident, which is the primary responsibility of the employer. The claimant's conduct interfered with the ability of the employer to see to the health and safety of the resident and constitutes conduct not in the best interests of the employer. She is disqualified.

DECISION:

The representative's decision of June 1, 2004, reference 01, is affirmed. Rita Graves is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount provided she is otherwise eligible.

bgh/kjf