

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANNETTE LANKFORD

Claimant

APPEAL NO. 07A-UI-06878-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOOD SAMARITAN SOCIETY INC

Employer

**OC: 06-10-07 R: 03
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 2, 2007, reference 03, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 31, 2007. The claimant participated in the hearing. Lori Welch, Human Resources Director; Layne Gross, Administrator; and Gwenn Musick, DON, participated in the hearing on behalf of the employer. Employer's Exhibit's One, Two, and Three were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as full-time CNA for Good Samaritan Society from July 20, 2006 to June 8, 2007. She was discharged for violation of safety rules and intentional violation of policies and procedures. The policy states that three infractions will result in termination. On January 5, 2007, the claimant took a breakfast tray to a bedridden Hospice resident and left the tray on the dresser out of the reach of the resident. She did not unwrap the silverware or open the plastic on the drink containers and did not follow up to see if the resident was fed. The claimant testified she was working in the dining room and was asked to take the tray to the resident and told the hall aide to feed the resident but the hall aide must not have heard her and the claimant did not check on the resident after that time. The employer issued a verbal warning in writing to the claimant as a result of that incident (Employer's Exhibit One). On March 6, 2007, the claimant received a written warning for transferring a resident without the assistance of another employee or with the assistance of a gaitbelt or EZ stand (Employer's Exhibit Two). The resident's legs buckled and she was lowered to the floor by the claimant and had two skin tears on her left hand and wrist (Employer's Exhibit Two). The employer has a policy requiring two employees to transfer a non-ambulatory resident with a Hoyer lift. On June 3, 2007, the claimant transferred a resident by herself using the Hoyer lift after she paged other employees for help and no one came immediately because they were still feeding other

residents. The claimant was aware of the policy but did not review the group sheet stating how each resident is to be transferred and chose not to wait for help (Employer's Exhibit Three). The claimant testified the resident had soiled herself and she did not want her to lay in her own feces while waiting for help to come. The employer suspended the claimant June 4, 2007, pending further investigation, and terminated her employment June 8, 2007, for three violations of the employer's violation of safety rules and intentional violation of policy and procedures.

The claimant has claimed and received unemployment insurance benefits since his separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job 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.

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). While the claimant may have had good intentions in transferring the resident with the Hoyer lift June 3, 2007, without another aide or nurse present to help, she was aware her actions were clearly a violation of the employer's policy. Although she may have paged other employees and did not receive a response in the amount of time she believed was reasonable, she did not have the patience to simply wait for help to come but

chose to go ahead with the transfer without another employee to help, which placed the resident at risk. Similarly, she failed to use a gaitbelt or EZ stand when transferring a resident March 6, 2007, and that resident fell and injured herself, resulting in another written warning for the claimant. The third violation occurred when she left a resident's breakfast tray on the dresser and did not follow up to make sure she had been fed. The claimant had three intentional violations of safety rules or policy and procedures. Consequently, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). 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 July 2, 2007, reference 03, decision is reversed. 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. The claimant is overpaid benefits in the amount of \$2,044.00.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw