

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHELLE J GROSVENOR**  
Claimant

**APPEAL NO: 12A-UI-04261-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**OC: 03/18/12**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's April 16, 2012 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated in the hearing. David Williams, a TALX representative, appeared on the employer's behalf. Donnette Ware, the director of nursing, and Holly Morrison, the registered nurse mentor, appeared on the employer's behalf. During the hearing, Employer Exhibits One through Five were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

**ISSUE:**

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in August 2009. She worked as a full time CNA. The employer has a progressive disciplinary procedure – counseling, a documented verbal warning, a written warning, a final written warning and termination. The warnings do not have to be for the same issue.

On June 27, 2011, the employer talked to the claimant after learning a resident's wife helped the claimant transfer a two-assist resident. The employer reminded the claimant about the safety issues when transferring residents and the need of another trained staff member for this procedure. (Employer Exhibit One.) The claimant received a documented verbal warning for failing to respond immediately when a resident's alarm went off. (Employer Exhibit Two.) On July 26, 2011, the employer gave the claimant a written warning for failing to properly clean a shower room. (Employer Exhibit Three.) The claimant also received her final written warning on July 26, 2011. She received the final written warning after she left her bottle of Ibuprofen in the shower room. The warning informed the claimant that the next corrective action would result in her discharge. (Employer Exhibit Four.)

On March 21, the claimant transferred a two-person assist resident by herself. A therapy person reported this after the resident told her the claimant had transferred the resident by herself. The resident care informs staff that she is to be transferred with two employees. The claimant knew she would be disciplined if she transferred a resident whose care required a two-person assist. The claimant could not find anyone to help her transfer a resident from the large bathroom to her wheelchair. Employees wear headsets so they can page for assistance. The claimant did not page anyone to help her. The claimant transferred the resident by herself.

The employer discharged the claimant on March 22 because she transferred a two-assistant resident by herself. (Employer Exhibit Five.) The claimant understood she would be disciplined for transferring the resident by herself, but did not believe she would be discharged. The claimant did not understand that progressive discipline would carry over from one year to the next.

### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant knew she would be disciplined if she transferred a resident by herself when the resident required two people for a transfer. The claimant was not only on a final written warning, but had also been retrained about the importance of having two employees transfer a resident when the resident's care required a two-person transfer. The claimant's assertion that she did not see anyone to help her does not excuse her decision to put herself and the resident in danger. The reason the employer gave employees headsets to wear was for this reason – to request help when assistance was needed.

Since the claimant knew she would be disciplined for transferring the resident by herself, she intentionally disregarded the employer's policy and the safety of the resident when she transferred the resident by herself. Even though the claimant did not realize she would be discharged, employees do not decide what discipline they will receive when they violate a rule. The claimant's decision to transfer a resident by herself on March 21 amounts to work-connected misconduct. As of March 18, the claimant is not qualified to receive benefits.

**DECISION:**

The representative's April 16, 2012 determination (reference 01) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of March 18, 2012. This disqualification continues until she 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.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs