

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FREDERICK L GRIMMETT

Claimant

APPEAL NO. 10A-UI-15326-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOOD SAMARITAN SOCIETY

Employer

OC: 09/19/10

Claimant: Appellant (2)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Frederick Grimmiett filed an appeal from a representative's decision dated November 2, 2010, reference 01, which denied benefits based on his separation from Good Samaritan Society. After due notice was issued, a hearing was held by telephone on December 22, 2010. Mr. Grimmiett participated personally. The employer participated by Cheryl Williams, Human Resources Associate. Exhibits One and Two were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Mr. Grimmiett was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Grimmiett was employed by Good Samaritan Society from October 21, 2009 until February 24, 2010 as a full-time CNA. On February 22, he was working with a resident who was using the toilet. He stepped into the hallway to obtain additional supplies and was asked by a nurse to take a different resident to the restroom. Mr. Grimmiett advised her that he was already with a resident who was on the toilet. He also advised her that the resident she wanted him to take to the restroom required two people to lift him and there was not another aide available.

When he finished with the resident he was working with, Mr. Grimmiett attempted to find another CNA to assist him with the resident the nurse wanted him to take to the restroom. Approximately 15 minutes elapsed between the time the original request was made to Mr. Grimmiett and when he found another aide and returned to assist the resident. During the interim, another nurse had requested that he take the resident to the restroom. Because he did not immediately take the resident to the restroom, he was considered insubordinate and was discharged on February 24, 2010. The only warning he had received was on February 4, when he was counseled regarding his attendance. Mr. Grimmiett's attendance was not a factor in the decision to discharge.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Grimmiett was discharged because he did not take a resident to the restroom immediately when asked to. The failure to perform a task is not misconduct if the failure was in good faith or for good cause. Woods v. Iowa Department of Job Service, 327 N.W.2d 768 (Iowa App. 1982). Mr. Grimmiett's failure on February 22 was due to the fact that he was already working with resident who was on the toilet and the fact that there was not a second person immediately available to assist with lifting the resident the nurse wanted toileted.

Mr. Grimmiett's position has remained the same throughout both the fact-finding interview and the hearing. The employer did not provide any firsthand testimony to refute his assertion that he was already working with a resident and that another aide was not immediately available to assist him with the resident the nurse wanted toileted. Nor did the employer establish that he could have left the resident he was working with without endangering that resident's health and safety. All of the nursing staff involved in the incident are still employed by the facility, but none were offered as witnesses. The employer was aware of Mr. Grimmiett's position from the fact-finding interview statement.

The administrative law judge concludes that Mr. Grimmiett's failure to take the resident to the restroom as requested by the nurses was based on his good-faith belief that he needed to finish with the resident he already had on the toilet. His failure was for good cause, because he did not have a second person immediately available to assist him in carrying out the nurse's request. On the whole, the employer's evidence failed to establish that Mr. Grimmiett was insubordinate on February 22 or that he otherwise engaged in misconduct on that date. As such, no disqualification is imposed.

DECISION:

The representative's decision dated November 2, 2010, reference 01, is hereby reversed. Mr. Grimmiett was discharged by Good Samaritan Society, but disqualifying misconduct has not been established. Benefits are allowed, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw