

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CATHERINE R BOESEN**  
Claimant

**APPEAL NO. 11A-UI-11051-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**OC: 07/17/11**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Care Initiatives filed a timely appeal from a representative's decision dated August 10, 2011, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on September 14, 2011. The claimant participated personally. The employer participated by Mr. David Williams, Hearing Representative and witnesses, Tammy Bowser, Director of Nursing; Latasha Porter, Certified Nursing Assistant; and Sara Posekney, License Practical Nurse.

**ISSUE:**

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having considered the evidence in the record, finds: Catherine Boesen was employed by Care Initiatives, doing business as Winsor Nursing and Rehabilitation, from June 14, 2011 until July 16, 2011 when she was discharged from employment. Ms. Boesen was hired to work as a full-time registered nurse.

Ms. Boesen was discharged based upon the employer's belief that Ms. Boesen had not timely responded to information about a resident who appeared to be in distress. Facility policy requires that caregivers provide immediate response. However, the claimant did not conduct an assessment of the resident's condition until approximately two and one-half hours later.

During the incident a certified nursing assistant, Ms. Porter, had stated that a specified resident was "more confused than earlier." The statement was made in the presence of Ms. Boesen who was coming on duty and in the presence of another nurse who was the charge nurse for the shift that was ending. Ms. Boesen overheard a portion of the conversation between the certified nursing assistant and the other nurse regarding references to a Foley catheter output but did not hear the portion of the statement earlier to the patient being "confused." As the claimant was unaware of any special circumstances she continued to perform other duties. Subsequently, a third shift aide working under Ms. Boesen's supervision on the third shift

reported that the resident appeared to need assistance and Ms. Boesen immediately responded.

During the investigation in this matter a care individual who was present reported that both Ms. Boesen and the second shift charge nurse both “looked up” when the CNA reported that the resident was “confused.” The employer thus concluded that the claimant heard the entire conversation and had not made a timely response to the resident’s needs. A decision was therefore made to terminate Ms. Boesen from her employment.

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

The question before the administrative law judge is whether the evidence in the record establishes intentional misconduct sufficient to warrant the denial of unemployment insurance benefits. 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 in this matter. See Iowa Code section 96.6.2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct.

App. 1992). The issue is not whether the employer made a correct decision in separating the claimant but whether the claimant is entitled to unemployment insurance benefits. Infante v. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984). When based upon carelessness the carelessness must actually indicate a “wrongful intent” to be disqualifying in nature. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa 1988).

In this matter the employer concluded that Ms. Boesen had intentionally failed to provide timely and necessary care to a resident based upon the report that the claimant and the other charge nurse had “looked up” when a certified nursing assistant had made reference to the resident. The administrative law judge finds the claimant’s testimony that she heard a portion of the conversation from the certified nursing assistant but not that portion of the resident being in distress, to be credible and not inherently improbable. The claimant was engaged in other work-related activities during a shift change and heard only a portion of the statement relating to a Foley catheter. The administrative law judge notes that later when an aide on the claimant’s shift reported that the same resident appeared to be in distress Ms. Boesen acted immediately to provide care and assistance to that resident.

The question before the administrative law judge is not whether the employer can discharge Ms. Boesen for these reasons but whether the discharge is disqualifying under the provisions of the Iowa Employment Security Law. While the decision to terminate the claimant may have been a sound decision from a management viewpoint, the evidence in the record does not establish intentional misconduct sufficient to warrant the denial of unemployment insurance benefits or carelessness indicating a wrongful intent on the part of the claimant.

Benefits are allowed providing the claimant meets all other eligibility requirements of Iowa law.

**DECISION:**

The representative’s decision dated August 10, 2011, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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