

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**SONIA M PIKNA**  
Claimant

**CARE INITIATIVES**  
Employer

**APPEAL 17A-UI-07354-DL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/04/17  
Claimant: Respondent (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The employer filed an appeal from the July 12, 2017, (reference 01) unemployment insurance decision that allowed benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on August 7, 2017. Claimant participated. Employer participated through Equifax unemployment insurance consultant Phyllis Farrell, manager Charissa Bassett and CNA Brice Mullikin. Dennis Mullens of Equifax/Tax represented the employer. Employer's Exhibits 1 through 3 were received.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time CNA from November 6, 2015, through June 16, 2017. She was suspended pending investigation on June 7 due to alleged, but unspecified, verbal abuse of a resident. She was interviewed on June 9. Claimant and Mullikin were in a room with a resident to get her out of bed, dressed and to the dining room when the resident, who is not cognitively able to recall, indicated her hands were in pain while being turned. Claimant adjusted her hands and told her, "we don't mean to hurt you." Mullikin reported to a nurse and the DON that claimant said there was nothing she could do about it and to "stop being a whiny little bitch." He said nothing to claimant at the time. Claimant did not do as Mullikin alleged. The night before the employer alleges a resident asked for something and claimant told her to turn around and go to sleep. A dressing was falling down on the confused resident's leg so claimant told the resident she could not address it but she would notify a nurse. Claimant alerted a nurse who was outside the room near the door. Claimant was and is aware of the standards of care owed to dependent adult residents. There had been no warnings or other complaints about claimant during her employment. She did have compliments about her care from residents' family members.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code section 96.5(2)a provides:

### **Causes for disqualification.**

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.

Iowa Admin. Code r. 871-24.32(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. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); accord *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000).

Misconduct "must be substantial" to justify the denial of unemployment benefits. *Lee*, 616 N.W.2d at 665 (citation omitted). "Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits." *Id.* (citation omitted). ...the definition of misconduct requires more than a "disregard" it requires a "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." Iowa Admin. Code r. 871-24.32(1)(a) (emphasis added).

Whether an employee violated an employer's policies is a different issue from whether the employee is disqualified for misconduct for purposes of unemployment insurance benefits. See *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000) ("Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits." (Quoting *Reigelsberger*, 500 N.W.2d at 66.)).

The incidents for which claimant was discharged have not been established to have happened as alleged. Both residents had cognitive difficulty and Mullikin either misheard claimant or had some sort of independent dispute with her. Thus, the employer has not established that she violated any standard of care due residents or otherwise engaged in any deliberate conduct, omission or negligence in breach of the employer's interests.

**DECISION:**

The July 12, 2017, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/rvs