

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AMANDA M MCCANDLESS**  
Claimant

**APPEAL NO. 14A-UI-03685-SW**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ELMWOOD CARE CENTER LLC**  
Employer

**OC: 03/02/14**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated March 26, 2013, reference 01, that concluded the claimant was on a disciplinary suspension for violating a company rule . Hearings were held on May 19 and 23, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Amy Buttemeier participated in the hearing on behalf of the employer. Exhibits A, B, and One through Ten were admitted into evidence.

**ISSUE:**

Was the claimant suspended and then discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full time for the employer as registered nurse from August 31, 2009, to February 26, 2014. She was informed and understood that under the employer's work rules, resident abuse was not tolerated.

On April 26, 2014, the claimant was attempting to give a shower or bed bath to resident who was resistant to being bathed or showed. She put a couple inches of warm water a basin and set the basin on the bed. When she asked the resident if she wanted a bath or shower, the resident pulled up on the bed comforter, which caused some water to spill on the bed. After checking the bed, the claimant noticed the bed was soiled. She asked the resident if she could get up so the claimant could change the bed. The resident became upset, yelled at the claimant, and threw the basin at the claimant. Eventually, the staff was able get the resident cleaned up and the bed changed.

Afterward, it was incorrectly reported by staff members that the claimant had deliberately spilled water on the resident to get the resident to take a shower. This allegation was untrue as the water was spilled by accident. The claimant never deliberately spilled water on the resident.

The claimant was suspended on February 26, 2014, pending the resolution of an investigation by the Department of Inspections and Appeals into the allegation that the claimant had abused

a resident by spilling water on her. When no determination had been made by Department of Inspections and Appeals by April 8, 2014, the employer discharged her for her conduct on February 26.

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

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. The unemployment insurance rules provide: "Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered discharged, and the issue of misconduct must be resolved." 871 IAC 24.32(9). There is a substantial question as to whether the claimant really was on a disciplinary suspension, but since the employer has not proven work-connected misconduct in this case, it is unnecessary to decide that issue in this case.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Iowa Code § 96.6-2; Cosper v. Iowa Department of Job Service, 321 N.W.2d 6, 11 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant was the only person with firsthand knowledge of what happened with the resident on February 26 who testified at the hearing. Her testimony was extremely credible and consistent and outweighs the unsworn statements presented by the employer.

No willful and substantial misconduct has been proven in this case. No repeated negligence has been shown.

**DECISION:**

The unemployment insurance decision dated March 26, 2013, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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