

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**NANCY K GLOVER
1018 THOMAS ST
CALLENDER IA 50523**

**FRIENDSHIP HAVEN INC
420 S KENYON RD
FORT DODGE IA 50501-5749**

**Appeal Number: 04A-UI-12913-LT
OC: 11-07-04 R: 01
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the November 30, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on December 28, 2004. Claimant did participate. Employer did participate through Amy Porter.

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 through November 8, 2004 when she was discharged. On November 7 claimant put a resident on a toilet and, knowing he was supposed to be attended, left him unattended for approximately an hour to answer other call lights. Someone else found him after he had fallen to the floor. That day there was one nurse and three aides working for

37 residents. Normally there are four or five aides and a med aide working and, in the past, there had also been two nurses on that shift.

On October 10 employer warned claimant after she pushed a resident's wheel chair down the hall and let go, causing it to run into a table. When reprimanded, she laughed and said, "yes, mother." She was placed on a two-day suspension. On October 8 claimant failed to provide toileting before the end of the shift, as is required every two hours regardless of whether the resident is on the bath list. On September 24 employer warned claimant because of failing to put a door alarm on a resident's room, she left two residents unattended in the whirlpool room (not in the water), and failed to answer a call light. On September 17 claimant failed to follow her supervisor's instruction to follow the resident's care plan, toilet, check and change, and reposition the resident every two hours, and used inappropriate language about her job in front of residents. On July 22 claimant left a resident with a personal alarm on toilet unsupervised.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

While employer bears some responsibility for limited staffing ratios, claimant knew the resident was to be attended while on the toilet but left him alone for an hour before a nurse discovered he had fallen while unattended. This incident alone was likely to warrant a denial of benefits but claimant had been warned on numerous prior occasions about properly attending to residents, including letting go of a wheelchair after pushing the resident down a hall, causing it to hit a table. The irresponsible and negligent acts were contrary to the best interests of employer and its residents and are considered misconduct. Benefits are denied.

DECISION:

The November 30, 2004, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

dml/b