

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VICKI L COWAN
Claimant

APPEAL NO. 08A-UI-04649-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

**OC: 04/13/08 R: 03
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Vicki Cowan filed an appeal from a representative's decision dated May 13, 2008, reference 01, which denied benefits based upon her separation from Care Initiatives. After due notice was issued, a hearing was held by telephone on May 29, 2008. Ms. Cowan participated personally. The employer participated by Joshua Burrows, attorney at law, and witness Debbie Clark. Exhibits One, Two, and Three were received into evidence.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct in connection with her employment.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant worked for this employer from March 22, 2007, until April 17, 2008, when she was discharged for improper patient care. Ms. Cowan was employed on a full-time basis. Her immediate supervisor was Debbie Clark.

The claimant was separated from her employment when she failed to follow established procedures by ensuring that a safety warning device was properly attached to a resident. The claimant had been warned in the past and was aware of this job responsibility. The failure of the claimant to attach the security device to the resident allowed the resident to become mobile without Ms. Cowan's or other staff members' knowledge. The elderly resident fell and was injured.

It is the claimant's position that she "thought" that the device was affixed to the resident.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes, based upon the evidence in the record, that the employer has sustained its burden of proof by a preponderance of the evidence in establishing that the claimant's discharge took place under disqualifying conditions. The evidence in the record establishes that Ms. Cowan was aware of the policy that required certain residents to be affixed with a safety monitoring device. The claimant had been warned in the past and was aware that her failure to affix the monitor and to monitor it could result in her termination from employment. A decision was made to terminate the claimant when Ms. Cowan failed to ensure that the safety device was affixed to a resident on or about April 17, 2008, resulting in the elderly resident sustaining injuries.

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.

For the reasons stated herein, the administrative law judge concludes the claimant's carelessness or negligence in failing to ensure that the safety device was properly affixed was negligence of such a degree so as to result in culpability under the provisions of the Employment Security Act. The claimant knew or should have known that it was imperative to ensure that the safety device to residents under her supervision.

DECISION:

The representative's decision dated May 13, 2008, reference 01, is hereby affirmed. The claimant was discharged under disqualifying conditions. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for ensured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw