

**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**

**DEBRA RAYMOND  
PO BOX 277  
CONRAD IA 50621**

**OAKVIEW INC  
OAKVIEW HOME OF CONRAD  
511 E CENTER ST  
CONRAD IA 50621-2013**

**Appeal Number: 05A-UI-08511-E  
OC: 07-17-05 R: 02  
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, 4<sup>th</sup> 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)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 10, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held in Waterloo, Iowa, before Administrative Law Judge Julie Elder on October 3, 2005. The claimant participated in the hearing. Kristy Rittgers, Director of Nursing; Dorothy McHone, Administrator; and Chris Cruz, LPN/Nurse Coordinator, participated in the hearing on behalf of the employer.

#### FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time CNA for Oakview Home from February 11, 1995 to July 1, 2005. The claimant was discharged for a willful violation of the employer's rules and careless action that endangered the life and safety of the residents. The employer's disciplinary policy provides that termination will result after one verbal and three written warnings. A documented verbal warning was issued January 11, 2005, after the claimant pulled a resident from the neck area instead of using a gait belt. The claimant was also warned about not helping with lift transfers. A safety meeting was held February 18, 2005, after the claimant left a resident alone on the side of a whirlpool tub. The resident is totally dependent and subsequently fell off the side of the tub and sustained facial lacerations. The claimant received a written warning June 4, 2005, for failing to use gloves for peri-care when the resident was in isolation for an infection. Another written warning was issued June 13, 2005, as a result of complaints made by a resident's family about the claimant. The family arrived at the facility and the claimant immediately stated that she could not do a thing with the resident. The family members saw the resident was in an acute state, spitting up large amounts of frothy sputum. The claimant transferred the resident without the use of a gait belt and grabbed the resident by the arm, causing a skin tear. The claimant made the same comments to the ambulance driver and then rolled her eyes while a family member was watching. The resident told her daughter that the claimant was always rude to her. The claimant refused to sign the written warning. A verbal warning was issued to the claimant June 15, 2005, for another inappropriate transfer of a resident. A written warning was issued June 19, 2005, for again not using a gait belt when transferring a resident. The final incident occurred June 30, 2005, when the resident mistreated a resident. The resident wanted to be dressed in a purple outfit but the claimant told her, "You'll wear what I get out for you." The claimant had also taken this resident to breakfast and served her leftover strawberries from another resident's meal when the resident requested strawberries. The resident began to tell a nurse that the claimant told another resident not to spit when she was walking that resident to lunch and when the resident started to say something, the claimant told her to "shut up." The claimant denied telling the resident to "shut up" but did admit to saying "we both better keep our mouths shut." The claimant was discharged July 1, 2005.

#### 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).

The claimant was discharged for willful violations of the employer's rules and careless actions that endangered the life and safety of the residents. She was repeatedly counseled and received numerous warnings for inappropriate treatment of residents. Her actions June 30, 2005, were not an isolated incident and demonstrated a consistent pattern of mistreatment of residents. The claimant's actions were a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. Consequently, the administrative law judge concludes the employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

DECISION:

The August 10, 2005, 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.

je/pjs