

**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**

**SHARON S BOCHMANN
15221 IVY AVE
GREENE IA 50636**

**BARTELS LUTHERAN HOME INC
1922 – 5TH AVE NW
WAVERLY IA 50677**

**AMY SWANSON
ATTORNEY AT LAW
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PARKERSBURG IA 50665**

**Appeal Number: 04A-UI-07859-CT
OC: 06/20/04 R: 03
Claimant: Respondent (2)**

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)

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Bartels Lutheran Home, Inc. (Bartels) filed an appeal from a representative's decision dated July 13, 2004, reference 01, which held that no disqualification would be imposed regarding Sharon Bochmann's separation from employment. After due notice was issued, a hearing was held by telephone on August 11, 2004. Mrs. Bochmann participated personally and was represented by Amy Swanson, Attorney at Law. The employer participated by Wendy Leisinger, Case Manager; Carol Brown, Human Resources Coordinator; and Kim Butler, Case Manager/Social Worker. Exhibits One through Ten were admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mrs. Bochmann was employed by Bartels from August 22, 1997 until June 15, 2004. She worked for approximately one year as a CNA and then became a full-time LPN. She was discharged from the employment after receiving a series of disciplinary actions.

On September 9, 2003, Mrs. Bochmann received a written warning based on an allegation that she failed to attend to her duties. A resident had fallen and Mrs. Bochmann did a preliminary assessment to determine the extent of her injuries. She put on the call light but no one responded. She then located a CNA and sent her to get a nurse from on break to complete the assessment. She also sent for additional personnel because it would take more than one person to get the resident up off the floor. On January 27, 2004, Mrs. Bochmann received another written warning for failing to attend to her duties. She failed to contact a resident's doctor when changes in her condition warranted it. She did not contact the doctor because the patient had been ill since January 14 and she felt the doctor might yell at her for calling him.

The final incident which precipitated the discharge occurred on June 13. Mrs. Bochmann was attempting to give medication to a resident who was agitated. The resident was refusing to take the medication but Mrs. Bochmann continued to try to force the issue. The resident had the right to refuse to take medication. The resident did take the medication eventually. At some point, the resident became soiled with food and feces. Mrs. Bochmann told the CNA to wait for approximately one hour before changing the resident to give the medication a chance to work so that the resident would be less combative. Because of this incident and the prior warnings, Mrs. Bochmann was discharged on June 15, 2004.

Mrs. Bochmann has received a total of \$1,555.00 in job insurance benefits since filing her claim effective June 20, 2004.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mrs. Bochmann was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). There were three incidents which contributed to Mrs. Bochmann's discharge. The warning of September 9, 2003 was not for conduct which constituted an act of misconduct. Mrs. Bochmann did a cursory assessment before sending for assistance. She had to leave the resident on the floor until help came because there was no response to the call light and one person alone could not get the resident up.

Mrs. Bochmann's failure to call the doctor relative to the January 27 incident did constitute misconduct. There were significant changes in the resident's condition, which warranted notice to the doctor. It appears that Mrs. Bochmann herself considered calling the doctor but decided not to. The fact that she thought the doctor would yell at her indicates that she gave some thought to calling the doctor. The administrative law judge presumes that she would not have considered calling the doctor unless the resident's condition warranted it. The fear that the doctor might yell at her did not absolve Mrs. Bochmann of her responsibility to look out for the best interest of the resident. Her failure to notify the doctor of the changes in the resident's

condition could have jeopardized the resident's health. For the above reasons, her failure to contact the doctor constituted an act of misconduct.

Mrs. Bochmann's conduct of June 13 also constituted misconduct. She knew or should have known that she should not force a resident to take medication. The administrative law judge appreciates that Mrs. Bochmann wanted to make the resident less combative so that her needs could be more easily met. However, making the resident easier to deal with could not supercede the resident's right to refuse medication. Whether Mrs. Bochmann tried for 10 minutes or 25 minutes, the fact remains that she gave the resident medication against her will. To compound matters, she intended to allow the resident to remain in soiled clothing for an hour waiting for the medication to take effect. This was contrary to the type of behavior the employer had the right to expect.

The acts of misconduct cited herein had the potential of jeopardizing the employer's license to do business. For the reasons cited herein, it is concluded that disqualifying misconduct has been established by the evidence and benefits are denied. Mrs. Bochmann has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code Section 96.3(7).

DECISION:

The representative's decision dated July 13, 2004, reference 01, is hereby reversed. Mrs. Bochmann was discharged by Bartels for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility. Mrs. Bochmann has been overpaid \$1,555.00 in job insurance benefits.

cfc/b