

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEVEN ARTS

Claimant

APPEAL NO: 09A-UI-11993-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES

Employer

OC: 07-19-09

Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 12, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 24, 2009. The claimant participated in the hearing. Paul Crane, Administrator; Karma Green, DON; and Jennifer Coe, Employer Representative, participated in the hearing on behalf of the employer. Employer's Exhibits One through Six were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

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/CMA for Care Initiatives from August 18, 2006 to July 16, 2009. On June 22, 2009, the claimant was observed by a corporate nurse consultant come out of a resident's room and announce there was "shit all over the floor" with residents and staff present and consequently he received a written warning which he signed (Employer's Exhibit Two). Around the end of June 2009 the claimant "tapped" a female co-worker in the rear end with his foot. She was upset by his actions and after she complained about the situation to the employer he agreed it was inappropriate and said it would not happen again. On July 15, 2009, a resident wanted to lie on her side without the abductor pillow between her knees as required when she lay on her back. She knew the abductor pillow was not necessary when she lay on her side but the claimant argued with her before leaving the room to check the CNA book to see if she was right. He found that she was correct but still argued with her and would not admit he was wrong which upset the resident. The resident told DON Karma Green that the claimant "threw both of his arms up in the air and stated, 'Women'" as he left the room. The employer planned to discuss that incident with the claimant the following day but on July 16, 2009, CNA Wendy Conour reported another situation involving the claimant and expressed concern about the care he provided to a resident. She stated that at 11:20 a.m. she and the claimant heard a resident's body and bed alarms going off and walked into her room. They discovered she was trying to walk and had her shirt half off in an effort to extricate herself from

the body alarm so she could go to the bathroom. The claimant gave her a walker and helped her into the bathroom. He was trying to put her in a gait belt when she was reaching for the toilet paper and Ms. Conour said and wrote that he "slapped her hands away from the toilet paper and said 'I'll wipe you'" (Employer's Exhibit One). "When (the resident) stood up (the claimant) pulled her pants up. She said 'But you haven't wiped me yet. You haven't wiped me.' (The claimant) said, 'Oh Jesus Christ' and yanked her pants down. He grabbed the toilet paper without putting gloves on and wiped her. Then he pulled her pants back up and walked her to the sink. He combed her hair very roughly and was pulling on the tangles. Then he walked her to lunch" (Employer's Exhibit One). Ms. Green immediately went to check on the resident and did not find any redness or bruising on her hands. The resident suffers from dementia and could not give, and therefore was not asked, to provide information about the incident. At 2:15 p.m. the claimant was preparing to leave for the day when Ms. Green and Administrator Paul Crane asked to meet with him to discuss the situations that occurred July 15 and 16, 2009. He admitted that he argued with the resident regarding the pillow stating she was argumentative and irritable and said that he left the room as employees are told to do when they are upset with a resident. He was then asked about what happened with the resident with dementia that day. The claimant confirmed he and Ms. Conour heard the alarms going off in the resident's room and went in to assist her but denied slapping her hands away from the toilet paper although he did say she complained about not being wiped. He then explained how difficult it was to care for that resident. The employer suspended the claimant and told him it would let him know his employment status as soon as possible. After discussing the final two incidents and considering his overall behavior in June and the first half of July the employer determined the claimant's pattern of inappropriate conduct was unlikely to change and notified him by phone July 16, 2009, that his employment was terminated.

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.

While the claimant denied the seriousness of the incident with the resident July 15, 2009, and denied everything reported by Ms. Conour except that he did not wipe the resident until she complained about it July 16, 2009, the employer's testimony and evidence was credible and persuasive. Additionally, the fact that the claimant either failed to recognize the serious nature of his actions or refused to acknowledge the incidents occurred at all supports the employer's contention that it was unlikely his behavior would change. Consequently, the administrative law judge concludes the claimant's conduct demonstrated 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. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The August 12, 2009, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs