

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARJORIE DONAHUE
Claimant

APPEAL NO: 09A-UI-05197-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIAVTIVES
Employer

OC: 02-22-09
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 25, 2009, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 30, 2009. The claimant participated in the hearing with Representative Richard Sturgeon. Jackie Blanchard, Nurse Manager; Amy Jacobsen; Teresa Borchers, Business Office Manager; and Jennifer Coe, Employer's Attorney, participated in the hearing on behalf of the employer.

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 LPN for Care Initiatives from August 25, 2004 to February 20, 2009. On March 12, 2009, she was working the rehab to home unit. The aide left at 6:00 p.m. The patient was an above the knee amputee. He wanted to slide himself from his wheelchair to his bed and indicated he could do so himself. The claimant could not find anyone to help so she attempted to help the resident herself and did so without using a gait belt as required and completed the act without incident. When the claimant leaned over and put her hands on each side of the slide board she realized she had reinjured her lower back. She reported her injury to the employer at the end of the night and was assigned to see a physical therapist. When speaking to the physical therapist the claimant volunteered that she was not using the gait belt and the physical therapist told the administrator. The patient told the claimant he was capable of using the slideboard himself. He then asked for the slideboard, angled his wheelchair at a 45 degree angle to the bed and slid his way up the slideboard without any more assistance than the claimant standing in front of him to catch him if he started to fall. The claimant did not consider the maneuver a transfer and consequently felt she had done nothing wrong. The employer started a policy September 11, 2008, stating any incident without a gait belt will result in immediate termination. Therefore, the claimant's employment was terminated February 20, 2009.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). While the claimant did not consider moving the claimant from his wheelchair to his bed to be a transfer, the employer defined it as such and the administrative law judge agrees it was a transfer. That said, however, her actions were an isolated incident of misconduct as defined by Iowa law. Although the claimant clearly violated the policy it was a one time occurrence and therefore does not rise to the level of disqualifying job misconduct. Benefits are allowed.

DECISION:

The March 25, 2009, reference 02, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css