

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GERALDINE D MATHEWS**

Claimant

**APPEAL NO. 07A-UI-02858-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HEARTLAND HEALTH MANAGEMENT**

Employer

**OC: 01/14/07 R: 04  
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated March 13, 2007, reference 02, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on April 5, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Sheila Matheny participated in the hearing on behalf of the employer with a witness, Joanie Moffett. Exhibits One through Eight were admitted into evidence at the hearing.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked part time from September 6, 2006, to February 21, 2007, as a companion in the assisted living providing housekeeping, personal hygiene, bathing, and dressing services to tenants in assistant living apartments. Joanie Moffett was the claimant's supervisor.

On January 11, 2007, the claimant was warned about patient privacy after failing to close the door while a tenant was using the toilet. On January 13, 2007, the claimant was counseled about unsatisfactory cleaning of a bathroom. On January 30, 2007, the claimant was placed on 90 days probation after some Jell-O was found on the floor in the kitchen after the claimant had mopped, she was observed watching television, and a tenant claimed she had been rough with her. She had the Weather Channel on and was not actively watching the television. She was never intentionally harsh with a tenant, but one female tenant had complained to her while she was trying to put Tet hose on the tenant.

On February 20, 2007, the claimant was responsible for assisting a tenant who needed to be helped with toileting and getting into bed. The claimant responded promptly when he put on the call light during the evening and took him to the bathroom. The tenant had a habit of sitting up in bed before lying down. At one point, while he was sitting up in bed, the claimant sat on the bed with a puzzle that she was trying to work with him for a few minutes. The tenant later complained to the nursing staff that the claimant did not assist him promptly and was doing a

puzzle instead of helping him to lie down. During the few minutes that she was looking at the puzzle, the resident did not ask to lie down.

In the morning after claimant's shift, the oncoming companion found dried bowel movement in the tenant's underwear and reported it to management. The claimant had gotten the tenant up during the night to urinate but was unaware of anytime when he went to the bathroom and had a bowel movement. She never saw any bowel movement in the tenant's underwear while she was caring for the tenant overnight.

Based the tenant's complaint and the report by the companion on February 20, 2007, the employer discharged the claimant on February 21, 2007, for violation of her probation.

### **REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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).

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. 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).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The current act of alleged misconduct in this case must be not promptly responding to call lights, doing a puzzle instead of putting the tenant to bed, and not properly cleaning the resident. On each of these points, the claimant's firsthand testimony was credible and outweighs the employer's testimony to the contrary. I believe the claimant's testimony that she knew her job was in jeopardy and was watching to make sure she responded to call lights promptly. I believe she was not goofing off when she was doing the puzzle but was trying to act like a companion and engage the tenant in an activity while he was sitting up in bed. Finally, I do not believe she willfully neglected to clean the tenant that evening. No willful and substantial misconduct has been proven in this case.

**DECISION:**

The unemployment insurance decision dated March 13, 2007, reference 02, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs