

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CARRIE A CHASE**  
Claimant

**APPEAL NO: 13A-UI-06287-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**OC: 04/28/13  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Carrie A. Chase (claimant) appealed a representative's May 17, 2013 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with Care Initiatives (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 3, 2013. The claimant participated in the hearing and presented testimony from one other witness, Terri Wilburn. Treve Lumsden of TALX Employer Services appeared on the employer's behalf and presented testimony from three witnesses, Linda Grinstead, Anne O'Brien, and Sharon Griffith. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**OUTCOME:**

Reversed. Benefits allowed.

**FINDINGS OF FACT:**

The claimant started working for the employer on January 2, 2003. She worked full time as a certified nursing aide (CNA) in the employer's Ottumwa, Iowa long-term care nursing facility. Her last day of work was April 23, 2013. The employer discharged her on April 24, 2013. The reason asserted for the discharge was failing to report an injury to a resident or completing an incident report on an injury to a resident before leaving at the end of a shift.

On April 5, 2013 the claimant had been given a final warning and suspension for some unrelated issues including arguing with a supervisor. On April 21 the claimant was working a 2:00 p.m. to 10:00 p.m. shift, but had stayed over the end of the shift a short while to assist in getting some residents situated for the night, as the third shift was slightly understaffed. At about 10:15 p.m. the claimant and another CNA, Wilburn, were doing a two-person lift to place a male resident into a recliner in the lobby area; a third CNA brought the mechanism over to the

chair. As the mechanism was pushed to the chair, it hit both the claimant and Wilburn in the shins, and the both said, "Ow!" The resident at that time also said, "Ow!" The claimant and Wilburn both assumed the resident was mimicking them, as he occasionally did, but the claimant did ask him if he was alright. The resident, who was oriented and alert, responded that he was alright.

At the nurses' station across from the lobby nurses O'Brien and Griffith heard the three all say, "Ow!" and one of them asked if the resident was alright. The claimant responded that the resident was alright. The claimant and Wilburn finished situating the resident, and then left for the night at about 10:25 p.m.

O'Brien and Griffith then observed that the resident was trying to take off his sock and went to him. When the sock was removed, it was discovered that part of a toe nail had been torn off. The two then attended to the torn toe nail and reported the incident. Because of the conclusion that the claimant had not discovered and reported the injury before leaving for the night, after having been placed on a final disciplinary warning for other issues, the employer discharged the claimant.

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

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is that she had failed to properly discover and report an injury to the resident before leaving her shift, after previously been placed on a final disciplinary warning for other issues. Under the circumstances of this case, the claimant's failure to discover and report the injury was at worst the result of inefficiency,

unsatisfactory conduct, inadvertence, or ordinary negligence, and was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

**DECISION:**

The representative's May 17, 2013 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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