

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VIOLA D MILTON
Claimant

APPEAL NO. 13A-UI-05809-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 04/21/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Viola Milton (claimant) appealed a representative's May 8, 2013 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Care Initiatives (employer) for violation of a known company rule. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 19, 2013. The claimant participated personally. The employer participated by David Mollenhoff, Human Resources Coordinator; Heather William, Director of Nursing; and Kelsey Toussaint, Licensed Practical Nurse. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on January 16, 2012, as a full-time certified nursing assistant. The claimant signed for receipt of the employer's handbook on December 18, 2012. The employer issued the claimant written warnings on July 28, 2012, and March 12, 2013, for failure to place alarms on residents. The employer notified the claimant that further infractions could result in termination from employment.

On March 17, 2013, a co-worker told the nurse that the one of the claimant's charges was wet. The nurse told the claimant to address the issue before leaving. The claimant knew the resident was dry but she changed the resident anyway. The claimant did not think it was fair that the co-worker was not being truthful. The claimant saw the coworker in the hall and said, "You all better get her out of my face before I knock her down and lace her boots. Cuz her ankles will be left in her shoes when she gets across the street to the hospital." Others heard the claimant and reported the statement to the employer. The employer suspended the claimant on March 17, 2013, pending investigation. The employer terminated the claimant on March 25, 2013.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for 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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant clearly disregarded the standards of behavior which an employer has a right to expect of its employees. The claimant's actions were volitional. When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. The claimant was discharged for misconduct.

DECISION:

The representative's May 8, 2013 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs