

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUSAN E MOORE
Claimant

APPEAL NO. 08A-UI-06443-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

**OC: 06/08/08 R: 03
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Susan Moore filed an appeal from a representative's decision dated July 10, 2008, reference 01, which denied benefits based on her separation from Care Initiatives. After due notice was issued, a hearing was held by telephone on July 29, 2008. Ms. Moore participated personally and Exhibits A and B were admitted on her behalf. The employer participated by Lori Pearson, DON; Jody Seddon, Assistant DON; and Mary Blumer, LPN. The employer was represented by Lynn Corbeil of Talx Corporation. Exhibits One through Eight were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Ms. Moore was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Moore was employed by Care Initiatives from August 30, 2007 until June 7, 2008. She was employed full time as a certified nursing assistant. The decision to discharge was prompted by her failure to use proper transfer methods on June 7, 2008.

On June 7, Ms. Moore and a coworker were assisting a resident by the name of Vincent. Vincent's care plan requires that he be lifted by two persons using a gait belt. Although the coworker was holding onto the gait belt attached to Vincent, Ms. Moore was not. Rather than using the gait belt in the proper manner, she was using her shoulder and knee to maneuver Vincent. She had been trained in the proper use of the gait belt. She had also attended in-services and meetings in which the importance of using the gait belt and other transfer methods were discussed. Ms. Moore received a written warning on October 4, 2007 because she had transferred two residents without assistance. Both residents required two people for transfers. Each resident has a chart in their bathroom indicating the requirements for transfers.

In making the decision to discharge, the employer also considered other disciplinary action taken against Ms. Moore. She received a warning on October 18 because she left a resident on the toilet for 25 minutes. She received a warning on November 2 because she left a resident in the shower unattended. She went to get assistance rather than using the call light that was in the shower. Ms. Moore received a warning on January 31 because of resident complaints that she was not listening to them. She was cautioned to stop and listen to what the residents were saying to her. She received a warning on March 28 because she told a resident to be quiet. Her actions were considered rude and disrespectful.

Ms. Moore received a warning on April 25 because she failed to follow a new procedure for getting residents up and putting them to bed. Residents who needed assistance were to be handled before those who did not. She was observed getting up people who did not need assistance first. She received a warning on May 25 for arguing with the nurse regarding passing ice and for not following an instruction to get a resident out of bed. Rather than get the resident out of bed, Ms. Moore raised the foot of the resident's bed.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). For reasons that follow, the administrative law judge concludes that the employer has satisfied its burden of proof. Ms. Moore engaged in a course of conduct that was contrary to the employer's standards and interests.

Ms. Moore left residents unattended either on the toilet or in the shower. A resident could have fallen and sustained an injury in either circumstance. In spite of being warned about transfers, she failed to utilize the correct procedure on June 7. There is the potential of a resident falling if not transferred properly. If a resident is injured while in the employer's care, the employer is legally liable. Moreover, the employer's license to do business could be adversely affected if a resident is injured as a result of the failure to follow proper procedures.

Ms. Moore's conduct in telling a resident to be quiet violated the resident's right to kind and considerate care. She also received warnings concerning her failure to follow instructions. Rather than getting a resident up as directed, she only lowered the foot of the resident's bed. In spite of being advised of the new procedure for getting residents up, she elected to disregard the policy. An employer has the right to expect that all reasonable directives will be followed. Ms. Moore chose to disregard specific instructions.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied.

DECISION:

The representative's decision dated July 10, 2008, reference 01, is hereby affirmed. Ms. Moore was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs