

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHANNON V. MURREN

Claimant

APPEAL NO: 17A-UI-06537-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CORNERSTONE SENIOR COMMUNITIES

Employer

OC: 05/28/17

Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 20, 2017, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 14, 2017. The claimant participated in the hearing. Lisa Loring, Administrator, 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 CNA for Cornerstone Senior Communities from May 24, 2016 to May 30, 2017. She was discharged after an accident that resulted in an injury to a resident.

On May 28, 2017, the claimant entered a resident's room to ready her for supper. She placed a gait belt around the resident and then the resident refused to go to dinner at that time because she would have been among the first there and sometimes was not able to return to her room until near the end of the meal period. The resident, who is cognitive and can communicate her needs, became very upset and stated she did not want to go to the dining room. The claimant tried to direct her to at least use the restroom but the resident said she did not want to do that either. The resident had her left hand on top of the gait belt and her right hand underneath the belt with her palm up. The claimant attempted to get the belt out of her grip and tried to loosen her grip but the resident would not release the belt. The claimant then tried to loosen the resident's fingers individually by pulling on her index finger and her thumb and as she did so the gait belt cut into the skin between the resident's index finger and thumb and she suffered a six inch skin tear in that area. The claimant placed her hand over the laceration to try to stop the bleeding and called the charge nurse and told her there had been an accident and the resident might need stitches. The nurse went to get bandages and then asked the claimant what happened. The claimant explained the situation and then went to wash her hands while the nurse bandaged the resident's hand. The nurse then instructed the claimant to remain in the

room with the resident on the other bed while the nurse called the resident's family member to notify the family the resident needed to go to the hospital for stitches. After ten minutes the claimant told the nurse she could not stay in the room because the resident did not want her in there. The nurse sent another CNA in to stay with the resident and the resident went to the bathroom and cried because she felt so badly about what happened.

The administrator saw the wound May 28 and again on May 29, 2017, when her bandage was changed. The employer called the claimant May 30, 2017, and informed her it was terminating her employment. The employer does not believe the claimant meant to cause harm to the resident. The employer turned the incident into the state but the state chose not to investigate it.

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, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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 in hindsight the claimant knows she should not have pursued the issue of trying to get the resident up with the gait belt as far as she did, she is genuinely remorseful and the evidence does not establish, nor does the employer believe, the claimant intentionally caused harm to the resident. The claimant was forthcoming about her actions each time she was asked and did not attempt to minimize or hide what occurred. At most this was an isolated incident of poor judgment on the part of the claimant but does not rise to the level of intentional job misconduct as that term is defined by Iowa law. Under these circumstances the administrative law judge must conclude the employer has not met its burden of proving disqualifying job misconduct on the part of the claimant. Therefore, benefits are allowed.

DECISION:

The June 20, 2017, reference 01, 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/scn