

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMANDA N RODGERS
Claimant

APPEAL NO. 09A-UI-03783-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 01/11/09
Claimant: Respondent (2)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Care Initiatives, filed an appeal from a decision dated February 25, 2009, reference 02. The decision allowed benefits to the claimant, Amanda Rodgers. After due notice was issued, a hearing was held by telephone conference call on March 27, 2009. The claimant did not provide a telephone number where she could be contacted and did not participate. The employer participated by Administrator Diane Hill and DON Kathy Marker and was represented by TALX in the person of Jennifer Coe.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Amanda Rogers was employed by Care Initiatives from November 20, 2008 until January 9, 2009 as a part-time certified nurses aide. She received the employee handbook and training on how to perform her duties.

On December 25, 2008, the claimant was assisting a resident to move from her bed to a chair. This resident requires the use of a gait belt for any such transfers, as she is unsteady on her feet. The staff is notified of the need for a gait belt by a symbol placed on the resident's bed. The gait belt provides for security by giving the staff a place to hold on without actually having to grasp any part of the resident's body and to lift or lower the resident with putting strain on the limbs.

The claimant did not have a gait belt on the resident when another aide came in and grasped the resident's arm to assist her to rise from the bed. The claimant did not stop the other aide from doing this and, as a result, the resident began to fall. Without a gait belt to hold on to, the other aide grabbed the resident's arm as she fell, breaking the arm.

The claimant was suspended pending investigation, which was done by Administrator Diane Hill and DON Kathy Marker. Staff and residents who witnessed the event were interviewed and it

was determined the claimant had not stopped the other aide from moving the resident without the gait belt. Ms. Rogers was discharged for violation of a critical safety policy which resulted in serious injury to a resident on January 9, 2009.

Amanda Rogers filed a claim for unemployment benefits with an effective date of January 11, 2009. The records of Iowa Workforce Development indicate no benefits have been paid as of the date of the hearing.

REASONING AND CONCLUSIONS OF 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.

The claimant was discharged for violation of a critical safety policy by not having the resident in a gait belt. The failure to follow this policy caused serious injury to the resident. The employer has the obligation to provide a safe environment for the residents for whose care it is responsible. The claimant's conduct interfered with its ability to do so. This is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of February 25, 2009, reference 02, is reversed. Amanda Rogers is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw