

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERI L HOFFMAN
Claimant

APPEAL NO. 07O-UI-01530-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

RISEN SON CHRISTIAN VILLAGE
Employer

**OC: 10/29/06 R: 01
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Risen Son Christian Village (employer) appealed a representative's November 14, 2006 decision (reference 01) that concluded Teri Hoffman (claimant) was discharged and there was no evidence of willful or deliberate misconduct. A hearing was held on February 27, 2007, following due notice pursuant to Remand Order of the Employment Appeal Board dated February 7, 2007. The claimant was represented by Mark Rater, Attorney at Law, and participated personally. The employer participated by Lisa Smith, Director of Nurses.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

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 June 16, 2003, as a full-time certified nursing assistant. The claimant signed for receipt of the company handbook on June 19, 2003. The claimant worked an overnight shift and cared for residents in approximately 36 rooms. She was to perform rounds at two hour intervals. In addition to rounds the claimant had other duties. She rarely was given a break during her 11:00 p.m. to 7:00 a.m. shift. While residents could also control the temperature in their individual rooms the facility had a central heating unit which did not allow the temperature of the building to become unsafe.

On October 27, 2006, the employer issued the claimant a verbal warning for failure to properly clean wheelchairs. The employer could not tell the claimant how to improve her cleaning or what area of the wheelchair was not cleaned properly. The claimant did not understand what she had done wrong or how to fix whatever mistake she had made.

The claimant worked a shift which began on October 31 and ended on November 1, 2007. During this shift she was training a new hire. The new hire was unable to perform any work on her own and so she stayed with the claimant for the shift. The claimant had a lot of work to do that night because the facility was short-staffed. There was no time for the claimant to take any break during her shift. The claimant barely finished her 3:00 a.m. rounds when she started her

5:00 a.m. rounds. She viewed all residents and cared for their needs. The claimant assisted all residents whom she heard request help.

After the claimant returned home the employer telephoned the claimant and said a resident was found soaked in urine, covered in bowel movement and the heat was off in the room. The resident was crying and cold. The employer immediately terminated the claimant. The employer did not feel the incident was significant enough to report to the State of Iowa.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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 employer discharged the claimant and has the burden of proof to show misconduct. The employer did not provide sufficient evidence of misconduct at the hearing. While the condition of the resident was

appalling, the employer did not prove who was at fault for the condition of the resident. The employer failed to provide enough employees to staff the facility so that employees could have a meal break. To lay the blame for this outcome on the shoulders of the one person who was attempting to care for residents in 36 rooms would be wrong. It was not within the claimant's power to do more. Consequently, the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's November 14, 2006 decision (reference 01) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css