

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAREN A KNAPP
Claimant

APPEAL NO. 07A-UI-10774-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE ALVERNO HEALTH CARE FACILITY
Employer

**OC: 10/21/07 R: 04
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

The Alverno Health Care Facility (employer) appealed a representative's November 14, 2007 decision (reference 01) that concluded Karen Knapp (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 10, 2007. The claimant participated personally. The employer participated by Sheryl Schutte, Co-Director of Nursing. The employer offered and Exhibit One was received into evidence.

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 December 17, 2003, as a full-time certified nurses' aide. The claimant signed for receipt of the employer's handbook on December 17, 2003. The employer issued the claimant warnings on May 1, and July 1, 2007, for poor quality care and failure to follow instructions.

On October 24, 2007, the claimant was upset about the division of labor. Later she was taking a resident to the dining hall when the her supervisor reminded her the resident should be walking to the dining hall. The claimant turned the wheel chair around so abruptly that the resident feared she would fall. The resident complained to her niece who later complained to the employer.

Some time later the supervisor asked the claimant to clean a resident again. The claimant made excuses and argued with the supervisor. The supervisor asked the claimant to leave the room. Shortly thereafter the supervisor sent the claimant home. After the claimant was at home the employer found a resident in the claimant's section sitting on the edge of the bed with an absorbent garment and pants on the floor around the resident's ankles.

The employer terminated the claimant on October 25, 2007, for failure to follow instructions.

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). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions. She pushed a resident in a wheel chair when the resident should have been walking. She swung the resident abruptly in the chair. She was angry with her supervisor. She did not clean the resident a second time. The claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's November 14, 2007 decision (reference 01) is reversed. 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. The claimant is overpaid benefits in the amount of \$1,463.00.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css