

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SARA RIEKEN
Claimant

APPEAL NO. 14A-UI-01481-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 12/29/13
Claimant: Appellant (1)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Sara Rieken (claimant) appealed an unemployment insurance decision dated February 4, 2014, reference 04, which held that she (claimant) was not eligible for unemployment insurance benefits because she was discharged from Care Initiatives (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 1, 2014. The claimant participated in the hearing. The employer participated through Sara Gaul, Director of Nursing; Rachel Grote, License Practical Nurse; Charissa Bassett, Administrator; Molly Petersen, MDS Care Planner; and Alyce Smolsky, Employer Hearing Representative. Employer's Exhibits One through Four were admitted into evidence.

ISSUE:

The issue is whether the claimant was discharged for work-related 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 employed as a part-time certified nursing assistant from November 19, 2013, through December 30, 2013, when she was discharged for a repeated failure to follow directives. She received her first corrective action warning on December 18, 2013, after a resident complained about her treatment at 4:00 a.m. on December 11, 2013. The resident said the claimant woke her up from a "dead sleep" and made her go to the restroom for an "emergency inspection." The claimant then wiped down the resident from the abdomen to the thighs and told her to go back to bed. The resident said the claimant did not even cover her with the blanket afterwards. The employer advised the claimant she was not allowed to wake up residents who are continent but that she could offer toileting if the resident was awake. The employer also informed the claimant she needed a more tactful approach with the residents.

A second warning was going to be issued to the claimant on December 30, 2013, for unsafe transfers, taking too long to compute tasks and failing to pull out floor alarms from under resident beds upon completion of care. However, the employer received additional complaints

of the claimant's care towards residents, so she was discharged as a result. The claimant left one resident on the bedpan for longer than four hours on the previous night. She gave thin liquids to residents that are on thickened liquids. The claimant continued to wake residents during the night when it was not necessary. A resident was found in the morning to be soaked with urine when co-workers saw the claimant go in and out of that resident's room all night and another resident complained that the claimant came into her room on the night of December 29, 2013, and messed with her catheter but refused to talk to her.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-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. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on December 30, 2013, for a repeated failure to follow directives. 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). The claimant had been warned but disregarded the warnings and employer's directives. When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated February 4, 2014, reference 04, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css