

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ALICIA YORK**  
Claimant

**APPEAL NO. 11A-UI-04059-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARMELITE SISTERS FOR THE AGED**  
Employer

**OC: 02-20-11  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the March 21, 2011, 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 April 28, 2011. The claimant participated in the hearing. Laura Williams, human resources director; Cheri Brauer, DON; and Heather Warren, human resources assistant, 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 Carmelite Sisters for the Aged from September 26, 2006 to February 21, 2011. On February 18, 2011, the claimant removed a resident from the dining hall before she was ready to leave. The resident stated the claimant “ripped” her clothing protector off and she told the claimant she was not done eating but the claimant ignored her. Another resident at her table told the claimant the resident was not done with her meal, but the claimant did not acknowledge her, either. When the claimant returned the resident to her unit, she complained to other staff and told her daughter about the situation. The employer’s policy states that residents are allowed to finish eating regardless of how long it takes.

On January 7, 2010, the claimant received a verbal warning for failing to get a resident’s vital signs before the end of her shift as instructed by a nurse. On January 26, 2010, she received a verbal warning after a resident’s colostomy bag burst and spilled all over the resident and the claimant failed to clean it up. On February 3, 2010, she received a written warning because she was supposed to check for skin tears on bath days and noted the only concern with one resident was that his/her fingers were blue January 25, 2010, but did not note there was an open area on the resident’s ankle and did not report it to the nurse. The employer discovered a Stage 3 skin tear on the resident’s ankle January 28, 2010, that judging by the condition of the wound had to have been there January 25, 2010. The warning further stated that the employer

needed to see immediate improvement or further action up to and including termination would result. On March 1, 2010, she received a verbal warning after being informed several times not to change the bath days for residents after previous complaints from residents and their families. The claimant was writing "will do tomorrow." If a resident refuses to take a bath or shower, the claimant was expected to get the nurse so she/he can see what the problem is and attempt to convince the resident to take a bath. On March 17, 2010, she received a verbal warning for failing to reposition a resident every two hours. The employer places alert tags under certain residents who require repositioning and the alerts state they need to give the tag to a supervisor immediately so they can be sure to reposition high-risk residents. The alert tag was placed under this particular resident at 5:45 p.m. and the claimant did not reposition the resident or see the alert tag. The tag was still under the resident at 9:20 p.m., indicating the claimant had not repositioned the resident. On April 21, 2010, she received a final written warning after a resident turned her call light on April 19, 2010, and the claimant went in and turned the call light off and left without toileting the resident as requested. The resident made the request at 9:50 p.m., ten minutes before the claimant's shift ended, so she told the third shift it needed to toilet the resident rather than do it herself. On October 13, 2010, she received a verbal warning after a resident complained she was rough with him and pushed him back down onto his bed when he tried to get up. On December 31, 2010, she received a final written warning and suspension for substandard work, misconduct, and carelessness. On three separate dates the claimant approached the residents in a manner described as hard, not taking her time with them, using an angry voice, being rough with transfers, and ignoring residents. The employer terminated her employment February 21, 2011, following the dining room incident February 18, 2011.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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 claimant received five verbal warnings, one written warning, one final written warning, and one final written warning with suspension during the last 13 months of her employment. She showed a pattern of treating residents poorly and not putting their rights and needs ahead of everything else. Despite repeated warnings, the claimant continued to treat the residents disrespectfully and without the dignity they deserve. The final incident is but one example. The resident wanted to stay in the dining room. Regardless of whether she was through eating she may have wanted to stay and visit with her friend who was still eating her dinner, as was her right, but the claimant ripped her clothing protector off and insisted she return to her unit, ignoring repeated protests by the resident and her friend at the table that the resident wished to remain at the table. The claimant did not engage in any dialogue with the resident and her friend about not leaving the table but instead simply wheeled her away from the table and back to her unit without comment. Consequently, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

**DECISION:**

The March 21, 2011, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

---

Julie Elder  
Administrative Law Judge

---

Decision Dated and Mailed

je/kjw