

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KAYLA R DOTY**  
Claimant

**APPEAL NO: 11A-UI-15160-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BARTELS LUTHERAN HOME INC**  
Employer

**OC: 10/23/11  
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's November 14, 2011 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated in the hearing. Brenda Schmadeke, the R.N. case manager, and Carol Brown, the human resource coordinator, appeared on the employer's behalf. During the hearing, Employer Exhibit One was offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

**ISSUE:**

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The employer rehired the claimant as a part-time CNA in October 2009. The employer has a progressive discipline policy. Depending on the policy violation, a Group I, II, or III, the disciplinary steps are different. A Group III violation results in an employee's immediate discharge. A Group II results in a written warning, a suspension, and then a discharge.

In May 2011, the employer gave the claimant a written warning for a Group II violation. In mid-August, the claimant received a three-day suspension for another Group II violation.

The weekend of September 24, the claimant was scheduled to work a weekend package. She had to work 12 hours each day to receive the increased weekend package rate. The claimant inadvertently overslept on September 24. She reported to work at 7:30 a.m. instead of her scheduled time for 6 a.m. The claimant worked until the end of her shift on September 24.

When the claimant reported to work, she checked residents on one side of the hall to make sure their alarms were on with an employee whose shift was ending. Two other employees checked residents' alarms on the other side of the hall. A resident, who was on the side of the hallway that the claimant did not check, fell on September 25. This resident's alarm was off. All

employees who checked residents' alarms that morning received a discipline for failing to check residents' alarms. The employer considered this a Group III violation.

The claimant did not feel well on September 25. She asked her co-workers if they would have any problems if she left work early and they did not. The claimant told the nurse on duty she was going to leave work at 6:00 p.m. instead of 6:30 p.m. The nurse told the claimant she needed to talk to her first. The claimant talked to the nurse and then left. (Employer Exhibit One.) The nurse tried to call the claimant when she did not see her after 6 p.m. on September 25. The claimant did not receive any calls because her cell phone was not working. When the claimant reported to work on October 3, the employer told her she was discharged. The employer discharged her for the incidents that occurred on September 25. The employer concluded the claimant did not talk to the nurse and was insubordinate by leaving work early after the nurse told her she needed to talk to the claimant. Insubordination is a Group III violation. The claimant talked to the nurse before she left work on September 25, 2011.

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

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good-faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The evidence does not establish that the claimant did not check residents' alarms when she reported to work on September 25, 2011. The claimant testified that she and another employee checked alarms on one side of the hallway and two other employees checked alarms on the other side. The resident who fell had his alarm checked by the other two employees.

The evidence does not establish that the claimant was insubordinate on September 25. Before the claimant left 30 minutes early because she did not feel well, she checked with her co-workers to make sure they could cover the shift if she left early. The claimant also told the nurse she was going to leave and talked to the nurse before she left. The nurse talked to the claimant about the resident who had fallen during her shift. The claimant may have used poor judgment when she left after talking to the nurse without receiving the nurse's explicit permission to leave. Since the claimant stayed and talked to the nurse before she left, the facts do not establish that the claimant was insubordinate.

The employer established business reasons for discharging the claimant, but she did not commit work-connected misconduct. As of October 23, 2011, the claimant is qualified to receive benefits.

**DECISION:**

The representative's November 14, 2011 determination (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of October 23, 2011, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw