

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRANDON J WEHDE
Claimant

APPEAL NO. 11A-UI-11833-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 08/07/11
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Brandon J. Wehde filed a timely appeal from an unemployment insurance decision dated August 30, 2011, reference 01, that disqualified him for benefits. After due notice was issued, a telephone hearing was held October 4, 2011. Mr. Wehde participated on his own behalf. Alyce Smolsky of TALX UC eXpress represented the employer, Care Initiatives. Human Resources Coordinator David Mollenhoff and LPN Tammy Craggs testified. Employer Exhibits One through Six were admitted into evidence.

ISSUE:

Was the claimant discharged for misconduct in connection with the employment?

FINDINGS OF FACT:

Brandon J. Wehde was employed as a certified nursing assistant by Care Initiatives from October 29, 2010 until he was discharged July 26, 2011. LPN Tammy Craggs told Mr. Wehde to check for linen in the closet of a particular resident shortly before the end of Mr. Wehde's shift on July 24, 2011. As Mr. Wehde entered the room he could smell feces and urine. He did not check the resident's bed but noted that there was no linen in the closet. He then left work for the day. Within 15 minutes, a CNA from the day shift called Ms. Craggs' attention to the room in question. Ms. Craggs could smell feces and urine from the hallway before she entered the room. Observing the bed, she saw a dried yellow stain on the bottom sheet. Within the larger stain the sheet was wet with urine and feces. Mr. Wehde's failure to check the resident's bed that morning was the final incident leading to his discharge. In addition to this incident, the employer also considered the fact that it had suspended Mr. Wehde in June for sleeping on the job. It also considered the fact that he had received prior warnings for failing to complete assigned duties.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with the employment. It does.

Iowa Code § 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. See Iowa Code § 96.6-2. Among the elements it must prove is that the final incident leading directly to the decision to discharge was an act of misconduct. See 871 IAC 24.32(8). If there is some element of misconduct in the final incident, the administrative law judge may also consider earlier events that played a part in the employer's decision to discharge.

The evidence persuades the administrative law judge that Mr. Wehde failed to provide proper care to the resident on July 24, 2011. Although not specifically directed to check the bed, the claimant testified that he observed the odor of urine and feces upon entering the room. It was an omission contrary to the employer's interests for him to fail to check the resident's bed. While this incident standing alone may not be sufficient to establish disqualifying misconduct, the incident viewed in the context of the prior warnings and suspension is sufficient. Benefits are withheld.

DECISION:

The unemployment insurance decision dated August 30, 2011, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs