

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

WENDY J FARREY
5553 NORTHWOOD CT
DUBUQUE IA 52002

CARE INITIATIVES
c/o JOHNSON & ASSOCIATES
PO BOX 6007
OMAHA NE 68106-0007

Appeal Number: 04A-UI-11174-AT
OC: 09-19-04 R: 04
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Wendy J. Farrey filed a timely appeal from an unemployment insurance decision dated October 5, 2004, reference 01, which disqualified her for benefits. Due notice was issued for a telephone hearing to be held November 2, 2004. Ms. Farrey responded by providing a telephone number at which she could be contacted. When the administrative law judge called that number at the time of the hearing, it was answered by a recording that the number was not in service. The employer, Care Initiatives, elected to rely upon the administrative file and documents which it had submitted for the appeal hearing.

FINDINGS OF FACT:

Having examined all matters of record, the administrative law judge finds: Wendy J. Farrey was employed by Care Initiatives from December 16, 2003 until she was discharged September 16, 2004. She worked as a certified nursing assistant. On September 14, 2004, a resident in Ms. Farrey's care fell to the floor. Without assistance and without notifying the charge nurse, Ms. Farrey picked up the resident. Only after noticing blood on herself did she notify the charge nurse. Ms. Farrey violated procedure by doing this.

On April 18, 2004, Ms. Farrey received a warning for leaving a resident unattended in a whirlpool chair. At the fact-finding interview, the claimant acknowledged that she was violating policy in the final incident leading to discharge.

REASONING AND CONCLUSIONS OF LAW:

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

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The evidence before the administrative law judge establishes that Ms. Farrey knowingly violated procedure by failing to notify the charge nurse and by picking up the resident without assistance. The evidence also establishes a prior warning, which was also for inappropriate resident care. These two incidents so close in time are sufficient to establish disqualifying misconduct. Benefits are withheld.

DECISION:

The unemployment insurance decision dated October 5, 2004, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to 10 times her weekly benefit amount, provided she is otherwise eligible.

pjs/tjc