

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

MIRTLE A TRUEBLOOD
PO BOX 345
STRATFORD IA 50249

CARE INITIATIVES
c/o TALX UC EXPRESS
PO BOX 6007
OMAHA NE 68106

Appeal Number: 05A-UI-00959-JTT
OC: 12/19/04 R: 01
Claimant: Appellant (2)

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 for Misconduct

STATEMENT OF THE CASE:

Ms. Trueblood filed a timely appeal from the January 20, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on February 14, 2005. Ms. Trueblood participated in the hearing. Alyce Smolsky of TALX UC Express represented Care Initiatives with witness Cheryl Lindmark, Nursing Director. Exhibits One, Two, and A were received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Trueblood was employed by Care Initiatives as a part-time Certified Nursing Assistant from February 12, 1977 until December 17, 2004 when Ms. Lindmark discharged her for alleged misconduct. According to her appeal, Ms. Trueblood is 77 years old.

The last incident that prompted Ms. Lindmark to discharge Ms. Trueblood occurred on December 15, 2004. On that date, Ms. Trueblood was scheduled to work 2:00 p.m. to 4:00 p.m. Ms. Trueblood left at the end of her shift without explicitly clearing her departure with the charge nurse. Under the

policies and procedures contained in the work rules provided to Ms. Trueblood, failure to check with her charge nurse before leaving could result in immediate termination. On December 15, Ms. Trueblood also left without providing a shift-change report to the charge nurse or the nursing assistant who would replace her on her unit. Ms. Trueblood would ordinarily take notes regarding any special issues concerning individual residents on her unit and would share these concerns as part of the shift change report. Ms. Trueblood had no special concerns to report on December 15.

Shortly after Ms. Trueblood arrived for her shift on December 15, she was asked whether she could stay longer through supper or approximately 7:30 p.m. Ms. Trueblood was dumbfounded that she was once again being asked to work later than scheduled and did not provide an answer at that time. On the previous day, December 14, Ms. Trueblood had been scheduled to work 2:00 p.m. to 4:00 p.m., had been asked to stay through supper, and had worked until 7:30 p.m. Ms. Trueblood had rearranged her dinner plans for December 14 in order to meet the needs of the nursing home. On December 13, Ms. Trueblood had not been scheduled to work. However, when contacted that day and asked to cover the 3:00 p.m. to 10:00 p.m. shift, Ms. Trueblood had done so. During the month of November, Ms. Trueblood had on several occasions been recruited on short notice to work extra hours and had rearranged her schedule to meet her employer's needs.

On December 15, Ms. Trueblood once again had dinner plans that she would have to cancel if she agreed to work through dinner at the nursing home. Ms. Trueblood was greatly distressed by having to repeatedly rearrange her schedule in response to the needs of her employer. Nonetheless, Ms. Trueblood performed her normal duties during her scheduled shift. At 4:00 p.m., Ms. Trueblood went on her break. On her way to the break room, Ms. Trueblood received a telephone call from her son, who advised that Ms. Trueblood had guests waiting for her at home. Ms. Trueblood had not yet decided whether to stay or go. Ms. Trueblood was distressed and torn between her desire to follow through with her dinner plans and the employer's request that she again work late. Certified Nursing Assistant Nicki Zeigler came to the break room and advised Ms. Trueblood that she was there to relieve her if she wished to go home. Ms. Trueblood told Ms. Zeigler that she was torn and did not know what to do. In this state of mind, Ms. Trueblood decided to leave, clocked out, and exited through the lobby of the nursing home. The charge nurse was in the lobby. A resident in the lobby asked Ms. Trueblood if she would see her later in the day, and Ms. Trueblood responded that she would not, as she was going home. Ms. Trueblood believed the charge nurse had approved of her leaving at 4:00 p.m., had sent C.N.A. to notify her that she could go home, and that the charge nurse had heard the conversation between Ms. Trueblood and the resident regarding Ms. Trueblood's departure.

Ms. Trueblood arrived at her home within 10 to 15 minutes. Ms. Trueblood was still greatly distressed. She realized she still had nursing home keys in her possession and immediately sent her son back to the nursing home with the keys. Ms. Trueblood also immediately contacted the Nursing Director, Ms. Lindmark, to indicate her willingness to return and work the later hours if she was needed. Ms. Trueblood was crying at the time of the phone call. Ms. Lindmark advised Ms. Trueblood that the nursing home had the situation covered and that Ms. Trueblood could stay home.

The next day, Ms. Trueblood arrived at 2:00 p.m. for her scheduled shift and was instructed to go to her unit. Within a few minutes, Ms. Lindmark advised Ms. Trueblood that she needed to go home until Ms. Lindmark completed her investigation. On December 17, Ms. Lindmark discharged Ms. Trueblood.

Ms. Trueblood had received a written reprimand on one prior occasion during her 27 plus years of employment with Care Initiatives. In April of 1998, Ms. Trueblood was reprimanded for leaving work without the permission of the charge nurse. It is not clear from the reprimand whether Ms. Trueblood left before, after, or at the scheduled end of her shift on that occasion. Ms. Lindmark advised Ms. Trueblood at that time that she would be terminated if the conduct reoccurred. See Exhibit 2.

REASONING AND CONCLUSIONS OF LAW:

The employer's witness characterized Ms. Trueblood's separation from the employment as a "self-termination" or quit. The evidence in the record does not support this characterization. Ms. Trueblood had no intention of severing her relationship with Care Initiatives and engaged in no overt act to carry out such an intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). On the contrary, Ms. Trueblood left work at the scheduled end of her shift on December 15, offered to work later if needed, and reported to work on December 16 at the scheduled start of her shift.

The question, therefore, is whether the evidence in the record establishes that Ms. Trueblood was discharged for misconduct in connection with her employment.

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).

Since Ms. Trueblood was discharged, the employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

On December 15, Ms. Trueblood desired to leave work at the scheduled end of her shift, which she had every right to do. Prior to December 15, the employer and Ms. Trueblood had fallen into a dysfunctional routine, whereby the employer would schedule Ms. Trueblood to work fewer hours than it really needed her and then at the 11th hour ask her to work beyond the scheduled end of her shift. Ms. Trueblood appears to have a strong work ethic. Ms. Trueblood also seems to have lacked the assertiveness necessary to say no to her employer's requests without falling into personal crisis. This combination led to an inevitable and predictable breaking point on December 15.

Ms. Trueblood was clearly in crisis at 4:00 p.m. on December 15. She went on her break, got the call from home that reminded her of her obligations outside of work, assumed she had permission to leave, and left. Her apparent misconduct was limited to not checking with the charge nurse on her way out and not providing a shift-change report. Regarding the shift-change report, there was, in fact, nothing to report. In addition, it is not clear that Ms. Trueblood was expected to make a shift-change report after working only a two-hour shift. Ms. Trueblood went on her break at 4:00 p.m. She was home by 4:10 – 4:15 p.m. She immediately sent her son to provide the keys she had forgotten to pass along. She was on the phone with Ms. Lindmark by 4:20 p.m., indicating her willingness to return to work and work beyond the scheduled end of her shift. Ms. Trueblood's failure to check with the charge nurse before she departed had minimal impact on the employer, if it had any impact at all. The evidence does not support the assertion that the nursing home had to take drastic steps to rearrange and reassign nursing assistants as a result of Ms. Trueblood's departure at the scheduled end of her shift. There is no indication on this record that Ms. Trueblood demonstrated a willful and wanton disregard of the needs of her employer. At most, Ms. Trueblood's failure to check with the charge nurse before departing at the scheduled end of her shift amounted to a good faith error in judgment. See 871 IAC 24.32(1)(a). Accordingly, no disqualification will enter.

DECISION:

The Agency representative's decision dated January 20, 2005, reference 01, is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

jt/tjc