

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CAROLINE BATHURST
Claimant

APPEAL NO. 12A-UI-06078-VST

COMMUNITY CARE CENTER
Employer

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/15/12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated May 17, 2012, reference 01, which held that the claimant was not eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 19, 2012. Claimant participated. Lana Bearden was a witness for the claimant. Kim Greenly was present to support the claimant. The employer participated by Lisa Blair, director of nursing. The record consists of the testimony of Lisa Blair; the testimony of Caroline Bathurst; and the testimony of Lana Bearden.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a long-term care facility. The claimant was hired on April 14, 2009, as a part-time certified nursing assistant. The claimant's last day of work was March 22, 2012. She was sent home that day after a safety violation with a resident. The claimant was terminated on April 20, 2012.

The incident that led to the claimant's termination occurred on March 22, 2012. The employer has a strict rule that no patients are to be transported in a wheel chair without pedals on the wheel chair. Lisa Blair, the director of nursing, observed the claimant running down the hallway, pushing a wheel chair, and there were no pedals in place. Ms. Blair stopped the claimant and asked her to come to the office.

The claimant became very angry when Ms. Blair tried to talk to her. She was stomping on the floor and yelling. The claimant had a job coach named Lana Bearden and Ms. Blair sent the claimant home so that she could speak with the claimant's job coach. Ms. Blair knew that the claimant had special needs and that she was prone to outbursts whenever she was criticized and that she had difficulties with stressful situations. Ms. Blair decided that she could not return

the claimant to the nursing department due to safety concerns about the residents. The claimant had previously been verbally warned about always using wheel chair pedals.

Ms. Blair told Ms. Bearden that she would try to find another job for the claimant at the facility. The claimant's outbursts and responses to criticism made the other departments reluctant to hire her. On April 20, 2012, Ms. Blair told Ms. Bearden that there were no jobs available for the claimant at the facility. Ms. Blair was under the impression that Ms. Bearden would tell the claimant whereas Ms. Bearden believes that this was Ms. Blair's responsibility.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the

worker's duty to the employer. An employer can reasonably expect that an employee will follow all work rules, especially those rules designed to protect the safety of residents in a long term care facility. An employer can also reasonably expect that an employee will be genial and civil in the workplace. The employer has the burden of proof to show misconduct.

The evidence in this case established that the claimant knowingly transported a resident in a wheel chair without using foot pedals as she had been instructed to do by the director of nursing. In addition, the claimant was running with the wheel chair, which created a particularly dangerous situation. When the director of nursing, Ms. Blair, saw what the claimant was doing, she stopped her and asked her to come to the office. The claimant became angry and was yelling and stomping her feet.

The claimant has some special needs and the employer had endeavored to work with her and her job coach. As soon as the claimant became angry, Ms. Blair sent her home and decided to speak with her job coach. Ms. Blair made some effort to find another job for the claimant when it was determined that she could not return to the nursing department. No other job was available due to the claimant's inability to control her anger and her prior outbursts. As a result the claimant was terminated. The administrative law judge concludes that the claimant was terminated for misconduct, specifically the failure to follow a known safety rule, after a warning. The claimant's actions in transporting the resident were potentially dangerous and the claimant was aware of the rules concerning transportation of residents.

The claimant's job coach believes that the claimant should receive unemployment benefits because the employer did not notify her of her termination. There appears to have been a miscommunication between Ms. Blair and Ms. Bearden. Ms. Blair thought Ms. Bearden would tell the claimant whereas Ms. Bearden felt that was Ms. Blair's responsibility. Given the role that Ms. Bearden played as job coach for the claimant, it was entirely reasonable for Ms. Blair to conclude that she would notify the claimant. In any event, the employer's failure to inform the claimant of her termination does not affect the decision on unemployment benefits. The claimant was terminated for disqualifying misconduct. Benefits are denied.

DECISION:

The decision of the representative dated May 17, 2012, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs