

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHIRLEY E HANAWALT
Claimant

APPEAL NO. 09A-UI-02368-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CAREAGE OF NEWTON LLC
CAREAGE OF NEWTON
Employer

OC: 12/21/08
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

Shirley Hanawalt filed an appeal from a representative's decision dated February 12, 2009, reference 01, that denied benefits based upon her separation from Careage of Newton LLC. After due notice, a telephone conference hearing was scheduled for and held on March 9, 2009. The claimant participated personally. The employer participated by Mary Greeley, Administrator.

ISSUE:

The issue is whether the claimant the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Shirley Hanawalt was employed as a certified nursing assistant for the captioned nursing facility from July 28, 2008 until January 26, 2009 when she was discharged after she violated a rule prohibiting the mistreatment of residents. The claimant had been suspended pending investigation and had been determined to be ineligible to work in a nursing or care facility based upon the results of the investigation by the Department of Inspections and Appeals. The claimant knew of should have known that conduct of that nature would result in her immediate discharge from employment.

It is the claimant's position that although the basis for her discharge is accurate she nonetheless hoped to qualify for unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

The evidence in the record establishes that the claimant was discharged for personal conduct towards a resident that was clearly in violation of the rules of the employer as well as State statutes. The claimant does not dispute her conduct at the hearing in the matter and had admitted to the employer that the allegations were factual.

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.

For the reasons stated herein the administrative law judge concludes that the employer has sustained its burden of proof in showing that the claimant was discharged for misconduct in connection with her work. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated February 12, 2009, reference 01, is affirmed. The claimant, Shirley Hanawalt, is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, providing that she is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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