

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AERIAL HESS
Claimant

APPEAL NO: 14A-UI-02478-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

PINNACLE HEALTH FACILITIES XVII L
Employer

OC: 02/02/14
Claimant: Respondent (2)

Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 24, 2014, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 27, 2014. The claimant did not respond to the hearing notice by providing a phone number where she could be reached at the date and time of the hearing as evidenced by the absence of her name and phone number on the Clear2There screen showing whether the parties have called in for the hearing as instructed by the hearing notice. The claimant did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Randy Downey, Administrator and Beverly Mentzer, DON, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time CNA for Pinnacle Health Facilities XVII L from March 9, 2013 to January 28, 2014. She was discharged for misconduct after a series of disciplinary action steps were taken.

On August 21, 2013, the claimant received a verbal warning after she improperly placed a lift sheet under a resident and consequently the resident slid out of the lift. On December 10, 2013, the claimant was suspended without pay for three days because she failed to complete peri-care on a resident and left early after telling her supervisor she had all of her work and documentation done. Peri-care is performed on incontinent residents and insures they are properly cleansed, repositioned, dry and clean. She was also talking to a resident about her sex life and the resident complained that it was inappropriate. The employer had talked to the claimant about having inappropriate conversations with residents but she brought up the same subject even after being informally counseled about the matter. The final incidents occurred January 12, 2014, when the claimant endangered a resident by leaving the resident alone on

the toilet when the care plan clearly stated the resident could not be left alone in that situation and then left the same resident up in the air in a lift while she left the room. The claimant was properly trained on both issues. The employer suspended the claimant January 14, 2014, while it investigated the last incidents and terminated the claimant's employment January 28, 2014.

The claimant has not claimed and received unemployment insurance benefits since her separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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.

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant had been counseled and suspended about her actions as a CNA but despite those warnings her behavior and care of residents did not improve as evidenced by her conduct January 12, 2014. Leaving the resident alone on the toilet and then leaving the same resident in the air in a lift while the claimant left the room were both dangerous behaviors as well as showing a lack of respect and disdain for the resident's dignity. Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right

to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The February 24, 2014, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant has not made a weekly claim for benefits and consequently is not overpaid benefits and there is no need to determine who would be responsible for repaying the benefits.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css