

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BEVERLY S GRIGGS
Claimant

APPEAL NO. 12A-UI-09657-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**EVENTIDE LUTHERAN HOME
FOR THE AGED**
Employer

**OC: 07/08/12
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 3, 2012 (reference 02) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on September 4, 2012. Claimant participated. Employer participated through employee records coordinator Connie Thompson, DON Doreen Adams, and RN Paula Sigebart.

ISSUE:

Did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a CNA from January 12, 2012 and was separated from employment on July 9, 2012. On July 8 Sigebart heard her say, "I am not afraid of you and look at your face." She saw opposing elbow shadows (one elbow of each person) on the wall indicating claimant was trying to wash the resident's face and he had his arm up defensively. The resident is post stroke and does not speak. She entered the room and asked claimant to step away. Sigebart went to the resident and asked if claimant hit him, he nodded and grunted, "Yes." A resident has the right to refuse to have their face washed. Sigebart did not confront or interview her about what happened but reported it to Adams. There had been other confrontations between claimant and the resident. During his bathing on a different day she heard claimant say, "I am not afraid of you" but did not ask her what was going on. Adams interviewed claimant on July 9 and got conflicting versions of the event. First she stated the curtain was pulled and the door was open. Then she stated both the curtain and door were open. Initially she said the resident was upset and shaking and later said he was not upset. She had prior written warning notices. On July 3 a consultant raised a concern after hearing claimant telling another coworker she was upset by her mother-in-law rescheduling something and stated, "I could have smacked her." The resident was confused and asked if someone was going to hit her. On July 2 she had been instructed to limit personal conversations in front of residents. On June 26 the employer told her she must communicate with a resident before beginning to push their wheelchair. On

June 25 a resident complained claimant was too rough with her. On February 13 the employer instructed her to act professionally, and watch what and how she says things to residents.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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 Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

The employer has presented substantial and credible evidence that claimant argued with a resident and washed his face when it was clear he did not want it done, which was a violation of resident rights. Given her previous warnings about incidents of rough treatment of a resident, failure to warn of moving a resident in a wheelchair, and alarming a resident by a personal conversation, the final incident is evidence of carelessness to such a degree of recurrence as to rise to the level of disqualifying job related misconduct. Benefits are denied.

DECISION:

The August 3, 2012 (reference 02) decision is affirmed. 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.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs