

**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**

**COLLEEN WILSON
1315 ENGLEWOOD AVE
WATERLOO IA 50701**

**HOMZ MANAGEMENT CORPORATION
6515 GRAND TETON PLAZA 220
MADISON WI 53719-1048**

**Appeal Number: 04A-UI-06605-ET
OC: 05-16-04 R: 03
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/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 10, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 12, 2004. The claimant participated in the hearing. The employer did not respond to the hearing notice and did not participate in the hearing or request a postponement as required on the hearing notice.

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 resident relations specialist for Homz Management from February 3, 1999 to May 19, 2004. The claimant managed Evans Village, a senior housing complex, and Ridge Village, a family complex. In January 2004, Team Coordinator Inez Green met with the claimant to conduct her annual performance evaluation. Ms. Green discussed the need for 60-day inspections of the residents apartments, home visits, newsletters and resident activities, and told the claimant she had written her evaluation in pencil and would make a few changes and send it back to her by mail. The claimant agrees she was behind in the 60-day apartment inspections and stated she responded to the employer's concern by completing the inspections between January and March 2004, and that according to her job description home visits were not mandatory. Prior to her January 2004 interview, the claimant sent monthly newsletters to the residents of Evans Village and quarterly newsletters to the residents of Ridge Village. Following her review, she began sending monthly newsletters to Ridge Village. The claimant held monthly activities for the residents of Evans Village, but did so less frequently for Ridge Village due to a lack of interest and participation by those residents. HUD funds the facilities and on May 19, 2004, the day HUD completed its inspection, Ms. Green gave the claimant her January 2004 evaluation and told her the employer was terminating her employment. In addition to the issues Ms. Green verbally discussed with the claimant during the January 2004 interview, the employer also cited failure to resolve residents' problems and "paperwork" as additional reasons for the discharge. The claimant was not aware of any situations in which she did not respond to a resident's problems and does not know what the employer was referring to in listing "paperwork" as a concern.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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).

The employer has the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). While Ms. Green may have discussed the inspections, home visits, newsletters and resident activities with the claimant in January 2004, the claimant responded to the concerns expressed by Ms. Green and took reasonable steps to improve her performance and meet the employer's expectations in those areas. Additionally, Ms. Green neglected to provide the claimant with a copy of her completed evaluation until the time she terminated her employment. The employer did not issue any warnings to the claimant or notify her that her job was in jeopardy. Consequently, the administrative law judge concludes the employer has not provided any evidence of misconduct on the part of the claimant as defined by Iowa law. Benefits are allowed.

DECISION:

The June 10, 2004, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

je/kjf