

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIMBERY K CHADA
Claimant

APPEAL NO. 08A-UI-07528-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOOD SAMARITAN SOCIETY INC
Employer

OC: 07-20-08 R: 02
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 15, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on September 3, 2008. The claimant did participate. The employer did participate through Larry Eickhoff, Administrator.

ISSUE:

Was the claimant discharged for work-related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a CNA full time beginning October 3, 2005 through July 18, 2008 when she was discharged.

The claimant was discharged because the employer believed she was mistreating a resident on July 12, 2008. The resident sits in a wheelchair that is fitted with an alarm to notify staff if he ever tries to leave his chair. The alarm is used to notify staff, including the claimant, that they must help the resident exit from his chair.

The resident routinely liked to be transferred from his wheelchair into a recliner in his room immediately after his meals. The resident went to his room and attempted to move himself from his wheelchair to his recliner without assistance of a staff member. The resident's alarm sounded. The claimant answered the alarm and asked the resident to wait to move into his recliner until she was done assisting other resident's in the dining room. Under the facilities policies the resident has the right to ask to be transferred to his recliner whenever he so desires. He is not required to wait until it is convenient for the claimant to move him. The claimant told the resident he would have to wait, even when he indicated that he did not want to do so. In order to discourage the resident from attempting to get into the recliner on his own, the claimant turned the recliner so it faced the wall. The claimant re-alarmed the resident's chair and returned to the dining room. The resident's alarm sounded again. When the claimant and others returned to the resident's room they discovered the recliner tipped over as the resident had attempted to get into the recliner on his own. While coworkers watched, the claimant then

assisted the resident in moving into the recliner. While doing so, she grabbed the resident's wrist and left bruises that were discovered the following day. She also knocked some of the resident's personal possessions off his table and spoke harshly to him in an angry voice. The other coworkers asked the claimant to leave and to let them assist the resident. The claimant did not initially heed the coworker's suggestion, but did eventually leave the resident's room and let her coworkers assist him. The coworker's reported what they had witnessed to the charge nurse as they believed the claimant had mistreated the resident. After an investigation the employer determined that there was no reason for the claimant to wait to transfer the resident from his wheelchair to his recliner and that had she done so when initially requested by the resident, neither she nor the resident would have become upset later. The claimant spoke harshly to the resident and grabbed his wrist so hard she left bruises on it. The claimant admitted at hearing that she should have acted on the resident's request when he made it, instead of insisting that he wait to be transferred. She also told Mr. Eickhoff during her interview with him that she should have left the room when the coworkers suggested and let them help the resident who was by then upset with her.

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 § 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 claimant admits she should have allowed the resident to transfer from his wheelchair to his recliner when he requested to do so. Additionally, she should have exited the room when asked to do so by her coworkers. By staying she became so angry with the resident that she left bruises on him when she did attempt to transfer him to the recliner. The claimant's actions resulted in harm to a resident. Such harm is not in the employer's best interest and does amount to misconduct sufficient to disqualify her from receipt of unemployment insurance benefits. Benefits are denied.

DECISION:

The August 15, 2008, reference 01 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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css