

**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**

**RUSSELL A WILLSON
1611 COLLINS ST #C6
WEBSTER CITY IA 50595-2683**

**OPPORTUNITY VILLAGE
1200 N 9TH ST W
PO BOX 622
CLEAR LAKE IA 50428-0622**

**Appeal Number: 06A-UI-01527-CT
OC: 01/08/06 R: 01
Claimant: Appellant (1)**

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 for Misconduct

STATEMENT OF THE CASE:

Russell Willson filed an appeal from a representative's decision dated February 3, 2006, reference 01, which denied benefits based on his separation from Opportunity Village. After due notice was issued, a hearing was held by telephone on February 27, 2006. Mr. Willson participated personally. The employer participated by Monica VerHelst, Team Administrator, and Sally Fagerlind, Team Leader. Exhibits 1 through 11 were admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Willson was employed by Opportunity Village

from August 27, 2003, until January 11, 2006, as a full-time personal assistant. The employer operates a residential facility for developmentally disabled individuals. Mr. Willson was discharged after receiving a series of warnings.

On June 1, 2004, Mr. Willson was given a written warning because it was felt that personal issues were being brought to the workplace. The warning was triggered by the fact that he had made three visits and three phone calls to the group home while he was off duty. The visits and calls involved personal issues he was having with another employee who was on duty. There were no further issues of this nature after the warning. Mr. Willson received another written warning on October 29, 2004, because he failed to correctly position a resident in bed, causing the resident to become wedged in an unsafe position.

On December 10, 2004, the employer held an in-service concerning Baclofen pumps, pumps that are placed in the front of the abdominal cavity to administer medication. During the in-service, which Mr. Willson attended, staff were directed not to lift residents from under the arms, because it could cause the catheter of the pump to become dislodged. Dislodging the catheter could cause other health problems. On December 27, 2004, the employer met with Mr. Willson concerning a complaint that he had lifted a resident onto the commode by himself without using a lift system. The resident in this case had a Baclofen pump. Any resident who weights in excess of 50 pounds is to be lifted using a lift system. Mr. Willson was able to correctly recite the employer's policy on lifting residents during the meeting of December 27. As a result of his failure to use the correct procedure, he was given a written warning on January 3, 2005. On November 30, 2005, Mr. Willson received a written warning because he displayed what the employer considered inappropriate behavior in the presence of residents. He was angry that he was being asked to take a resident to the hospital. He raised his voice and became argumentative, questioning why someone else could not be assigned that task.

The final incident that caused the discharge occurred on January 6, 2006. Mr. Willson was lifting a resident when the nurse he was working with reminded him that he was using the incorrect sling in the lift. Each resident has his or her own sling with their name on it. When Mr. Willson began to raise the resident, the nurse pointed out that his buttocks were hanging far out of the sling. She asked Mr. Willson to fix the problem, and he responded by saying that staff on other shifts did not say anything about such problems. The nurse stated that she did not want to have an accident because of something that could be fixed. Mr. Willson replied that he had never had an accident and "this is crazy." The nurse again asked him to fix the problem and then walked away. During that same shift, there was a complaint from one of Mr. Willson's coworkers that he had snapped a towel at her back, causing a red mark. The two had been hitting each other playfully when the incident occurred.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Willson was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Willson received warnings regarding various aspects of his job performance. The administrative law judge concludes that his failure to adhere to the employer's standards for lifting residents constituted misconduct within the meaning of the law. Mr. Willson was in attendance at the December 10, 2004, in-service in which staff were trained on the proper procedure to use to lift residents with Baclofen pumps. In spite of the training, Mr. Willson lifted a resident, who had a Baclofen

pump, on his own on December 27. His disregard of the employer's standards could have resulted in injury to the resident.

The issue of using lifts was reviewed during Mr. Willson's performance evaluation in June of 2005. He was reminded that appropriate lifts were to be used on all residents who weighed more than 50 pounds. On January 11, 2006, Mr. Willson again violated the employer's standards regarding lifting residents and wanted to argue the matter when the nurse alerted him to the fact that he was using the wrong sling for the resident he was lifting. His response indicated a willingness to ignore the employer's standards if no one complained.

Mr. Willson was entrusted with the care of individuals who were dependent upon him for care. The employer's standards regarding lifting residents were intended to minimize the opportunity for injury. By disregarding those standards, Mr. Willson caused a potential for injury to residents. The issue had been raised with him during warnings and during his evaluation. In spite of the warnings, Mr. Willson still disregarded the employer's standards. Although the two incidents cited herein occurred a year apart, the fact remains that Mr. Willson's statements to the nurse on January 6, 2006, suggested a past pattern of disregarding standards, as well as a willingness to continue to disregard the standards. For the reasons cited herein, the administrative law judge concludes that the claimant's failure to adhere to the employer's policy regarding lifting residents constituted a substantial disregard of the employer's standards and interests. Accordingly, it is concluded that misconduct has been established and benefits are denied.

DECISION:

The representative's decision dated February 3, 2006, reference 01, is hereby affirmed. Mr. Willson was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

cfc/kjw