

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TERRY SMITH**  
Claimant

**APPEAL NO. 08A-UI-05821-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**OC: 05/25/08 R: 03**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Terry Smith (claimant) appealed an unemployment insurance decision dated June 23, 2008, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Care Initiatives (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 10, 2008. The claimant participated in the hearing with Law Clerk Nina Forcier from Legal Aid. Paralegal Hattie Holmes was present but did not participate in the hearing. The employer participated through Administrator Jeff Woollum, Director of Nursing Angie Kopriva, Assistant Director of Nursing Brittanny Grant, Charge Nurse Nicole Bateman, and Employer Representative Alyce Smolsky. Employer's Exhibits One through Three were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

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

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time certified nurse's aide/certified medical aide from April 25, 2002 through May 28, 2008. He was placed on a final warning on August 22, 2007 for failing to use a gait belt that was required to transfer a resident. On May 25, 2008, the claimant was working on B Wing when he heard the door alarm go off at 4:15 a.m. The alarm panel specifically shows which door caused the alarm to go off, but the claimant failed to look at the panel and just shut off the alarm. He then checked A Wing because the CNA working that wing was on break. He did not see that anyone got out and the door was closed. The claimant performed a room check and found all the residents in their rooms.

He then proceeded to check the unit for which he was responsible and went to the outside door but did not open it and merely looked out the window. The claimant did an improper bed check on B Wing and reported to the charge nurse that everyone was in their beds. In fact, a resident

called Mrs. Z was not in her bed on B Wing and had actually gone outside the B Wing door. Approximately one hour later, the charge nurse discovered Mrs. Z was not in her room and was missing. The claimant went outside the B Wing door and found Mrs. Z on the ground on her left side lying in a fetal position. Mrs. Z sustained some minor injuries and was brought back into the facility. The employer provided medical care to Mrs. Z, but her injuries did not require emergency treatment. The employer initially suspended the claimant, who was very remorseful. He was subsequently terminated due to the seriousness of the incident and the fact that he was negligent in three different steps, any one of which could have possibly prevented the tragedy from occurring.

## **REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was on a final warning when he was negligent on May 25, 2008; his negligence resulted in injuries to a resident and financial

penalties assessed to the employer. Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. Henry v Iowa Department of Job Service, 391 N.W.2d 731 (Iowa App. 1986). In the case herein, the claimant was not negligent once that morning, but three separate times. The claimant's actions show a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

**DECISION:**

The unemployment insurance decision dated June 23, 2008, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/kjw