

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VELTA R VANDERMARK
Claimant

APPEAL NO. 07A-UI-00638-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 12/17/06 R: 03
Claimant: Respondent (2)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Care Initiatives, filed an appeal from a decision dated January 10, 2007, reference 01. The decision allowed benefits to the claimant, Velta Vandermark. After due notice was issued, a hearing was held by telephone conference call on February 1, 2007. The claimant participated on her own behalf. The employer participated by Human Resources Kyle Merry and Director of Nursing Linda Staggs and was represented by TALX in the person of Mike Sloan. Exhibit One was admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Velta Vandermark was employed by Care Initiatives from July 20, 1987 until December 15, 2006. She was a full-time certified nursing assistant working 6:00 a.m. until 2:00 p.m. During the course of her employment she received written warnings from time to time regarding a failure to follow proper procedures. The progressive disciplinary policy calls for discharge after three written warnings in a 12-month period.

Ms. Vandermark received written warnings on March 31, 2006 for not checking and changing a resident's incontinent garment, and on October 17, 2006, for not using a gait belt to reposition a resident. A final written warning was issued on December 12, 2006, for the claimant's failure to turn on the alarms for three residents. These alarms are placed on beds and wheelchairs and will go off if residents attempt to leave their bed or chair without assistance. It is essential for the proper care of the residents. The warning notified the claimant her job was in jeopardy if there were any further incidents.

On December 13, 2006, a resident was seen by other staff members transferring himself from his wheelchair to a couch. The alarm did not go off and the staff checked it immediately and found it was not turned on. It was tested and determined to be in good working order. The claimant was discharged after an investigation.

Velta Vandermark has received unemployment benefits since filing a claim with an effective date of December 17, 2006.

REASONING AND CONCLUSIONS OF LAW:

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 claimant had been advised her job was in jeopardy as a result of her failure to follow policy regarding the care of residents. Twice in two days she had not properly turned on alarms for residents which jeopardized their safety. It is the employer's obligation to provide care for the dependent adults and the claimant's failure to follow correct protocol interfered with its ability to do so. This is conduct not in the best interests of the employer and the claimant is disqualified.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of January 10, 2007, reference 01, is reversed. Velta Vandermark is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$1,590.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css