

**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**

**KARI V SANCULI
PO BOX 58
RUTHVEN IA 51358-0058**

**HOPE HAVEN INC
1800 – 19TH ST
ROCK VALLEY IA 51247**

**Appeal Number: 06A-UI-02777-HT
OC: 02/12/06 R: 01
Claimant: Respondent (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
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Hope Haven, filed an appeal from a decision dated February 27, 2006, reference 01. The decision allowed benefits to the claimant, Kari Sanculi. After due notice was issued a hearing was held by telephone conference call on March 28, 2006. The claimant participated on her own behalf. The employer participated by Residential Manager Leann Blau.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Kari Sanculi was employed by Hope Haven from

December 10, 2004 until February 10, 2006. She was a part-time associate residential instructor working 26 hours per week. At the time of hire Ms. Sanculi received a copy of the employee handbook which set out the employer's disciplinary policy. On January 15, 2005, she received the policy manuals and training. Hope Haven deals with residents who are allowed to make their own choices as far as bathing, taking medications and other personal matters. There are no sanctions imposed on the facility if a resident chooses not to take medications or clean themselves because they are considered to have the same rights as anyone else and may refuse these cares.

On February 3, 2006, the claimant wrote an incident report in which she stated she had carried one of the residents to the bathroom to toilet and shower after the resident had consistently refused to clean herself. The resident "acts out" by falling down and as she was doing this Ms. Sanculi caught her then carried her to the bathroom where she remained with her for two hours. There were two other residents in the facility who went largely unsupervised.

The incident report was forwarded to Residential Manager Leann Blau and she received it February 8, 2006. A meeting was set up with the claimant on February 10, 2006, to discuss it. At the meeting Ms. Sanculi admitted she had carried the resident to the bathroom after she had refused to go. This was considered a violation of the resident's rights which is a dischargeable offense under the employer's policies and the claimant was discharged.

Kari Sanculi has received unemployment benefits since filing a claim with an effective date of February 12, 2006.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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).

Ms. Sanculi received not only the employee handbook and the employer's policies, but also extensive training on proper handling of the residents. The claimant violated the employer's policies and the resident's rights by taking her to the bathroom when she had previously indicated she did not want to go. Instead of using the proper "coaching" or "persuasive" methods Ms. Sanculi overrode the resident's wishes. While it is undoubtedly unpleasant to have to remain in close quarters with a resident who has soiled herself and refused to bathe, this is the type of behavior to be anticipated from the residents in such a facility. The claimant had no authority to override the resident's wishes and force her into the bathroom.

The matter was reported to the State of Iowa as possible abuse, which could subject the employer, as well as the claimant, to sanctions. 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 February 27, 2006, reference 01, is reversed. Kari Sanculi 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 \$780.00.

bgh/s