

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARILYN A ELAND
Claimant

APPEAL NO: 13A-UI-01705-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

PINNACLE HEALTH FACILITIES XVII
Employer

**OC: 01/06/13
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated February 8, 2013, reference 01, that held she was discharged for misconduct on January 2, 2013, and benefits are denied. A telephone hearing was held on March 12, 2013. The claimant participated. Kristine Erickson, D.O.N., participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record, finds: The claimant began employment on August 17, 2011, and last worked for the employer as a full-time charge nurse on January 1, 2013. The employer issued claimant a final written warning on November 2, 2011 for poor customer service and failure to document assessments with medication record errors. The warning advised claimant a further incident could lead to employment termination.

A resident family member complained to the employer about how claimant handled a non-family resident on January 1, 2013. The complaint stated claimant forcefully shoved a wheelchair under the resident in response to an alarm, tugged on the resident's shirt to pull him down, and dislodged an oxygen bottle in the process. The facility administrator and D.O.N. called claimant into a meeting on January 2 to discuss the complaint.

Claimant stated she was responding to a wheelchair alarm where the resident was trying to get up and she reacted by getting him seated. She denies using force though she admits she tugged on his shirt to get him seated. The employer discharged claimant for her forceful conduct in dealing with the resident in light of the final warning.

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 administrative law judge concludes the employer has established claimant was discharged for misconduct in connection with employment on January 2, 2013.

The employer final warning to claimant made it clear it would not tolerate any further incident regarding her job duties. The family member complaint against claimant did not come from the resident's family but from a visitor for a different resident. A reasonable inference is the complaint would not have been made unless the complainant believed claimant was too forceful in dealing with the resident and did not want their family resident treated in a like manner.

While getting a resident seated in response to a wheelchair alarm is paramount, it should be done in a kind and considerate manner without the use of force. The claimant's forceful behavior is an act of misconduct and constitutes job disqualifying misconduct in light of the final warning.

DECISION:

The department decision dated February 8, 2013, reference 01, is affirmed. The claimant was discharged for misconduct on January 2, 2013. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs