

**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**

**SARA M FARMER  
405 ELLSWORTH  
ALDEN IA 50006**

**HERITAGE OF IOWA FALLS INC  
c/o TALX-HOWARD JOHNSON ASSOC  
PO BOX 6007  
OMAHA NE 68106**

**Appeal Number: 05A-UI-05092-DWT  
OC: 04/10/05 R: 02  
Claimant: Appellant (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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Sara M. Farmer (claimant) appealed a representative's May 5, 2005 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Heritage of Iowa Falls, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 2, 2005. The claimant participated in the hearing. The employer notified the Appeals Section that the employer decided against participating in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

#### FINDINGS OF FACT:

The claimant started working for the employer in September 2002. The claimant worked as a full time certified nurse aide. The claimant's supervisor was the director of nursing.

Prior to April 5, 2005, the claimant's job was not in jeopardy. The employer had not given her any verbal warnings and the claimant had not received any written warnings.

On April 5, 2005, the charge nurse, L.M., asked the claimant to help pass out dinner trays to residents until a certain resident's tray appeared. When this tray appeared, the claimant was to take the tray to the resident's room to feed her. The claimant finished a conversation she was having with a licensed practical nurse and then went to pass out dinner trays to the residents. Other employees were passing out trays and the claimant stood in line to get a tray. By the time the claimant could get a tray, it was the resident's tray that the charge nurse asked the claimant to do. The claimant went to the resident's room to feed her. While the claimant was in the room, the claimant's husband came to exchange car keys. He went to the resident's room so he could get the claimant's car keys.

After the claimant had finished feeding the resident, L.M. yelled at the claimant in front of employees and co-workers and told her she was going to write her up. When the claimant asked what she had done wrong, L.M. indicated she had not followed her instructions and also reprimanded her because she had talked to husband for over ten minutes. Later, that day, L.M.'s husband came to the facility and talked to her. When the claimant asked L.M. why it was okay for her to talk to her husband when the claimant could not, L.M. told the claimant she had enough of the claimant and contacted the director of nursing. The next day, the employer discharged the claimant for being insubordinate.

#### REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. 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 propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer may have had business reasons for discharging the claimant. The evidence does not establish that the claimant committed work-connected misconduct. Instead, the facts reveal that prior to April 5, the claimant's job was not in jeopardy. On April 5, the facts indicate there was a communication breakdown between the claimant and a charge nurse. The incident that occurred between the claimant and her charge nurse was an isolated incident. The facts do not establish that the claimant intentionally or substantially disregarded any instructions her charge nurse gave her that day. The claimant was not insubordinate. The claimant did not commit work-connected misconduct. Therefore, as of April 10, 2005, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's May 5, 2005 decision (reference 02) is reversed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of April 10, 2005, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/pjs