

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GRETCHEN T COHEN

Claimant

APPEAL NO. 09A-UI-17374-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STONEHILL CARE CENTER

Employer

OC: 10/11/09

Claimant: Appellant (1)

Section 96.5(2)a – Discharge

Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant, Gretchen Cohen, filed an appeal from a decision dated November 2, 2009, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on December 30, 2009. The claimant participated on her own behalf. The employer, Stonehill Care Center, participated by Human Resources Director Cris Kirsch. Exhibit D-1 was admitted into the record.

ISSUE:

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

FINDINGS OF FACT:

A disqualification decision was mailed to the claimant's last-known address of record on November 2, 2009. The claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by November 12, 2009. The appeal was not filed until November 16, 2009, which is after the date noticed on the decision. She received the decision on November 12, 2009, but did not read it carefully regarding the appeal due date. But she went to her local Workforce Center on November 16, 2009, and filed the appeal that day.

Gretchen Cohen was employed by Stonehill Care Center from January 15, 2009 until October 14, 2009 as a full-time CNA. She received a written warning and one-day suspension on June 19, 2009, for not hooking up a "fall alarm" on two residents. This was discovered when one of the residents fell out of their wheelchair. This was a serious safety violation and the warning notified her any further safety violations could lead to discharge.

On October 10, 2009, another staff member discovered one of the residents was sitting up in the chair in her room. When the claimant was questioned she acknowledged she had moved the resident by herself. The care plan instructions for this resident are posted in her room and require two people to lift and move her or else one person with a Vander Lift. The incident was

reported to the shift supervisor who wrote up a report and referred it to DON Jane Wills and Human Resources Director Cris Kirsch. The incident was reviewed and the claimant was discharged for another serious safety violation.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6-2 provides in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

The claimant filed her appeal within four days of receiving it, even though the due date was the date on which she received it. The appeal should be accepted as timely.

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 committing a serious safety violation. In spite of the warning the claimant again failed to follow the care instructions for a resident and moved her without assistance of either another staff member or a Vander Lift. This conduct jeopardized the resident's safety as well as the claimant's. The employer has the obligation to provide a safe environment and good care to all residents. The claimant's conduct interfered with its ability to do so. This is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The decision of the representative dated November 2, 2009, reference 01, is affirmed. Gretchen Cohen is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css