

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MISSY A ARENHOLZ
Claimant

APPEAL NO: 06A-UI-08311-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BARTELS LUTHERAN HOME INC
Employer

**OC: 07/09/06 R: 03
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Bartels Lutheran Home, Inc., (Bartels) filed an appeal from a decision dated August 11, 2006, reference 03. The decision allowed benefits to the claimant, Missy Arenholz. After due notice was issued a hearing was held by telephone conference call on September 5, 2006. The claimant participated on her own behalf. The employer participated by Human Resources Coordinator Carol Brown and Vice President of Support Services Robin Gaines. Exhibit One and Two were admitted into the record.

ISSUE:

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

FINDINGS OF FACT:

Missy Arenholz was employed by Bartels from July 21, 2005 until July 12, 2006. She was a full-time dietary aide working in Eichorn House.

On July 7, 2006, Team Leader Ann Clancy reported to Vice President of Support Services Robin Gaines that a resident had complained to her on July 1, 2006, about comments made by the claimant which the resident considered to be rude. Ms. Gaines conducted an investigation by interviewing the resident who is alert and oriented as Eichorn House is an independent living facility. The resident submitted a written statement at the request of Ms. Gaines.

When Ms. Gaines interviewed the claimant, Ms. Arenholz admitted to making the statements to the resident but asserted she was “only kidding” as she had done in the past. However, the resident did not perceive the comments in this manner and made the complaint to the team leader. The claimant was discharged for violation of a group three policy, which is grounds for immediate discharge. The policy prohibits abusive language to residents, co-workers or guests.

Missy Arenholz has received unemployment benefits since filing a claim with an effective date of July 9, 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.

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).

The employer's duty is to provide professional care to its residents. The claimant's conduct was inappropriate and intimidating to the residents who complained. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and is conduct not in the best interests of the employer. 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 August 11, 2006, reference 03, is reversed. Missy Arenholz 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 \$1,335.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/cs