

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

KATIE PRESCOTT TIBBLES  
1700 LOMAS CR  
ATLANTIC IA 50022

CARE INITIATIVES  
c/o TALX UC EXPRESS  
PO BOX 6007  
OMAHA NE 68106-6007

Appeal Number: 04A-UI-10901-CT  
OC: 08/15/04 R: 01  
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 for Misconduct

STATEMENT OF THE CASE:

Katie Prescott, now Tibbles, filed an appeal from a representative's decision dated September 29, 2004, reference 01, which denied benefits based on her separation from Care Initiatives. After due notice was issued, a hearing was held by telephone on November 1, 2004. Ms. Tibbles participated personally. The employer participated by Sandra Lundvall, Nurse Consultant, and Larry Allen, Administrator. The employer was represented by Roxanne Bekaert, Attorney at Law. Exhibits One through Six were admitted on the employer's behalf.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Tibbles was employed by Care Initiatives, doing business as Atlantic Nursing and Rehabilitation Center, from July 2, 2003 until August 16, 2004. She was employed full time as a certified nursing assistant. Ms. Tibbles was discharged for violating the employer's policy regarding the transfer of residents.

On July 12, 2004, Ms. Tibbles received a verbal warning for not having another individual assist her in transferring a resident using a mechanical lift. The resident needed to be transferred from her wheelchair because she had had a bowel movement and there were feces under her. Ms. Tibbles called for assistance and tried to locate someone to help her, to no avail. When the resident began to complain about a burning sensation, Ms. Tibbles decided to use the lift to "hover" the resident approximately 12 inches from the wheelchair so that she could clean the feces from under her.

On August 13, Ms. Tibbles and a coworker, Angie, were in the restroom with a resident, Amy. Angie was securing Amy's wheelchair while Ms. Tibbles assisted her on and off the toilet. Amy's care plan called for her to be assisted by two individuals, meaning both individuals had to have their hands on her at the same time to provide stability during the transfer process. After Amy was back in her wheelchair, Ms. Tibbles repositioned her by using the gait belt. Amy did not voice any complaints of pain or injury at the time, which was approximately 9:30 a.m. Amy did not complain of pain until approximately 12:30 p.m. while she was being transported to her noon meal. It is possible that other staff may have transferred or repositioned Amy during the interim between 9:30 a.m. and noon. Ms. Tibbles was given a written warning for not having a second person assist her with Amy's transfer.

After Amy complained of pain in her breastbone, she was sent for medical treatment. It was determined that she had a fracture of the sternum. When questioned, she indicated that "that girl" injured her while she was being placed in the wheelchair. The nurse who was with Amy interjected that "that girl" was Katie Prescott. The employer believed Ms. Tibbles was responsible for the injury and, therefore, discharged her on August 16, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Tibbles was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Tibbles was discharged for twice violating the employer's standards regarding the transfer of residents. She attempted to get assistance on July 12 but no one was available to help her. Although having the resident "hover" above the wheelchair was not acceptable, Ms. Tibbles did so only because the resident was sitting in feces and was complaining of a burning sensation.

Ms. Tibbles also failed to follow procedure on August 13. Although Angie was present at the time, she was not actually assisting with the transfer, only stabilizing the wheelchair. The employer apparently felt this conduct only warranted a written warning as that is what was given to Ms. Tibbles on August 13. The decision to discharge was made only after it was determined that Amy had sustained an injury. But for the diagnosed injury, Ms. Tibbles would not have

been discharged. The administrative law judge is not inclined to find misconduct in actions the employer did not feel even warranted discharge.

The administrative law judge is not satisfied that Ms. Tibbles was, in fact, the individual who caused injury to Amy. She did not complain of any pain at the time Ms. Tibbles transferred and repositioned her. It was not until three hours later that Amy complained of pain. Others may have assisted her during the interim as Amy tends to use the restroom frequently. The administrative law judge is also not satisfied that Amy independently confirmed that Ms. Tibbles was the individual who caused her injury. When the nurse brought Amy to the director of nursing's office, Amy referred to "that girl." It was the nurse who said "that girl" was Katie Prescott.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that the employer has failed to satisfy its burden of proof in this matter. While the employer may have had good cause to discharge, conduct, which might warrant a discharge from employment, will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons stated herein, benefits are allowed.

#### DECISION:

The representative's decision dated September 29, 2004, reference 01, is hereby reversed. Ms. Tibbles was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/pjs