

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANGEL BILBREY**

Claimant

**APPEAL NO: 11A-UI-02052-E**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PACIFICA HEALTH SERVICES LLC**

Employer

**OC: 01-16-11**

**Claimant: Appellant (1)**

Section 96.5-2-a –Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the February 18, 2011, reference 01, decision that denied benefits to the claimant. After due notice was issued, a hearing was held in Des Moines, Iowa, before Administrative Law Judge Julie Elder on March 14, 2011. The claimant participated in the hearing with Attorney Ben Humphrey. Vicki Derringer, Director of Nurses; Kim Miles, Human Resources Manager; and Attorney Tara Hall, participated in the hearing on behalf of the employer. Employer's Exhibits One through Four were admitted into evidence.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time CNA for Carlisle Center for Wellness and Rehab from December 9, 2010 to January 14, 2011, when she was discharged for an intentional disregard of her duties. The employer received concern forms from two of the claimant's co-workers January 13, 2011. The claimant was working in the East dining room January 13, 2011, at the dinner time and was an extra CNA who was also available to answer call lights. A male alarmed resident pulled his call light and the claimant went to answer it but returned shortly thereafter and stated to her co-workers, "I left him in his wheelchair to transfer himself." Residents are not to be left alone until the cares are complete and the cares were not complete when the claimant left the resident. Her co-workers told the claimant this resident was an alarmed resident and assist of one, so could not be left unattended. The claimant did not return to the resident but simply said, "That's how everyone else does it" and "He should have been helped up before supper," after which she sat down in the dining room. The employer investigated the matter and questioned CNAs Kaila Northway, Jennifer Bohenkamp and Ashley McClain who all confirmed the facts as stated above. The employer met with the claimant January 14, 2011, and she admitted she knew the resident was alarmed and an assist of one. The claimant also confirmed that she knows a CNA cannot leave alarmed residents unattended and that when a resident asks for assistance, she is required to help them. When questioned why she did not help the resident, she said she was told by the other CNAs to let the resident

“do whatever.” She also said, “that’s what they all do” and “that’s how it’s done.” The claimant acknowledged she had been previously warned about emotional outbursts in the workplace, taking smoke breaks when she should have been assisting residents with meals, defensiveness regarding instructions and directions, issues with maintaining resident dignity, and giving her own grandparents direct care, which is a conflict of interest. The employer concluded the claimant left an alarmed resident unattended, refused assistance to a resident who had asked for help to change clothes and transfer/get up for supper, and failed to provide pericare for the resident after an incontinent episode by only draping the resident’s pants over the back of a wheelchair instead of physically performing the task herself. The employer discharged the claimant at the end of the meeting.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for job-related misconduct.

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 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 claimant was discharged January 14, 2011, for a dereliction of duties. She left an alarmed resident unattended after he requested help and she failed to provide the pericare and other assistance. The claimant is an experienced CNA and

knew what was required of her in this situation and willingly chose to disregard those requirements. The claimant's conduct shows a willful disregard of the standards of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Therefore, benefits are denied.

**DECISION:**

The February 18, 2011, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/css