

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DAWN HICKS
Claimant

BARTELS LUTHERAN HOME INC
Employer

APPEAL NO. 14A-UI-08313-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/13/14
Claimant: Appellant (1)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Dawn Hicks (claimant) appealed an unemployment insurance decision dated August 4, 2014, (reference 01), which held that she was not eligible for unemployment insurance benefits because she was discharged from Bartels Lutheran Home, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 2, 2014. The claimant participated in the hearing. The employer participated through Veronica Shea, Human Resources Generalist and Brenda Schmadeke, Health Services Manager. Employer's Exhibits One through Six were admitted into evidence.

ISSUE:

The issue is whether the claimant was discharged for work-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked as a full-time certified nursing assistant (CNA) from December 17, 2010, through July 14, 2014, when she was discharged pursuant to the employer's progressive disciplinary policy. Her first Group II, written warning was issued on October 1, 2011, for a safety violation when she improperly transferred a resident in violation of the resident's care plan. Her actions resulted in the resident's skin tear. A second Group II, written warning was issued on March 12, 2014, when the claimant again violated a resident's care plan by leaving her in her room unattended. Consequently, the resident sustained a fall with a head injury.

A Group II, three-day suspension was issued on May 13, 2014, after the claimant made inappropriate comments to some residents regarding another department. A Group I, verbal warning was issued on June 6, 2014, after the claimant was heard making an inappropriate and offensive comment under her breath. Each warning advised the claimant that further violations may result in disciplinary action up to and including discharge.

The termination occurred as a result of the claimant's repeated inappropriate treatment of the residents on the second floor on July 3, 2014. Four separate students participating in clinical training complained to the employer about the claimant's rude and aggressive behavior to the residents. These students provided written statements describing numerous incidents. When a resident complained that her food was cold, the claimant replied, "It's not my fault you didn't eat it when it came out and was hot." The claimant was aggressive and too forceful while placing a resident's slippers back on her feet and she yelled at another resident when that resident did not remember the name of her own brother. The claimant went on vacation on July 4, 2014, and was discharged after she returned to work on July 14, 2014.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-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. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on July 14, 2014, pursuant to the employer's progressive disciplinary policy. She received previous warnings for failing to follow resident's treatment plans and inappropriate behavior. The claimant's continued rude and aggressive treatment towards residents resulted in her discharge. Her contention that the allegations are not true and they only resulted because one of the students wanted to get her fired is not supported by the evidence. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated August 4, 2014, (reference 01), is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css