

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHARON K PRATT**  
Claimant

**APPEAL NO. 09O-UI-00955-MT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**OC: 11/16/08 R: 03  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated December 8, 2008, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, and a remand order dated January 20, 2009, a telephone conference hearing was scheduled for and held on February 6, 2009. Claimant participated personally. Employer participated by Josh Burrows, Attorney TALX with witnesses Donnetta Ware, DON and Patrick Luft, Administrator. Exhibits One and Two were admitted into evidence.

**ISSUE:**

The issue in this matter is whether claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on November 10, 2008.

Claimant was discharged on November 11, 2008 by employer because claimant allowed a resident to crawl back and forth from a recliner in the resident's room. Employer asserts that claimant should not have allowed the resident to crawl back to a chair. Claimant did not arrive in time to stop the resident from crawling out of the chair. Claimant did direct the resident to crawl back to the chair. The crawling was not dangerous to the resident. Crawling is no more risky than carrying the resident back to the recliner.

Claimant had a final warning on her record.

**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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning resident dignity and safety. Claimant was warned and trained on this policy.

The last incident, which brought about the discharge, fails to constitute misconduct because claimant did not place the resident in any more danger by having him crawl back as compare to lifting or carrying the resident back to the chair. Furthermore, this is not an undignified manner to get a resident back in a chair. The resident was having fun with the situation. Best to allow such individuals their little moments of joy considering the precarious future and forgotten past. Crawling back had less risk for a fall then carrying and assisting the resident. It may have been safer to let the resident crawl. This was a judgment call by claimant. Either method was appropriate under the circumstance. Employer chose to view this as unsafe and demeaning conduct. At best claimant is guilty of an isolated instance of poor judgment. The administrative

law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

**DECISION:**

The decision of the representative dated December 8, 2008, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

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Marlon Mormann  
Administrative Law Judge

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Decision Dated and Mailed

mdm/css