

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AUDREANNA M LAMBERT
Claimant

APPEAL NO. 11A-UI-14755-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

**OC: 10/16/11
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

The employer filed an appeal from the November 4, 2011 (reference 01) decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call on December 16, 2011. Claimant participated. Employer participated through DON Sarah Thomas and Administrator Tabitha Jaden and was represented by David Williams of TALX. Employer's Exhibits 1 through 3 were admitted to the record.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a CNA and was separated from employment on October 18, 2011. Ensuring placement of working and activated resident personal or pressure alarms is the CNA's responsibility. When an alarm is missing or defective, the employer's procedure calls for one CNA to stay with the resident and another to retrieve a working alarm or batteries from the CNA room. Most recently, on October 8, the employer accused claimant of failing to complete the resident alarm check at the start of the shift. She had been interrupted during alarm check at the beginning of the shift and did not return to the check process until later. In the meantime, her hall partner had turned the alarm off when the resident was in his recliner. On October 6, claimant told Thomas that the alarm was missing from the dining room chair of resident Clarence. Thomas, who was helping another nurse at the nurse's station, directed claimant to get the alarm before she and her coworker left him in the dining room. Neither claimant nor temporary staffing agency CNA Robin retrieved or placed an alarm and Clarence fell. Right after the fall, another CNA went to the CNA room and retrieved a functional alarm. (Employer's Exhibit 3) The employer investigated and suspended claimant on October 14. Robin was also disciplined. On September 1, 2011, Thomas inspected and found three alarms were not in place with residents, so she warned claimant about making sure all pressure or personal alarms were in place before she left at the end of the shift. (Employer's Exhibit 2) On August 9, 2010,

the employer warned claimant about replacing missing batteries from an alarm and to ensure it was placed on a resident's chair. (Employer's Exhibit 1)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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.

Inasmuch as the claimant's hall partner turned off the alarm for the resident while he was in his recliner after claimant was interrupted during her alarm check at the beginning of the shift on October 8, the employer has not met the burden of proof to establish that claimant acted deliberately or negligently after the most recent warning. Employer has not established a current or final act of misconduct, and, without such, the history of other incidents need not be examined. Accordingly, benefits are allowed.

DECISION:

The November 4, 2011 (reference 01) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw