

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PATRICIA A OBRIEN**  
Claimant

**APPEAL NO. 11A-UI-02666-PT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WESLEY RETIREMENT SERVICES INC**  
Employer

**OC: 01/23/11  
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 February 24, 2011, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 29, 2011. Employer participated by Debbie Hornbuckle, Human Resources Partner and Kristin Meyer, Director of Nursing. Claimant participated with Michelle Carlson as witness and was represented by James Mailender, Attorney at Law. Claimant's exhibit A was admitted.

**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 was employed from July 31, 2006 through January 25, 2011. She was discharged from her employment because she did not answer a call light for a resident resulting in the resident calling 911 to request assistance and because the claimant made an inappropriate remark regarding a resident. The facility was short-staffed the night of this incident. The battery in the claimant's radio was not functioning so she did not hear the calls for someone to help the resident whose call light was going off. There were a number of residents who had the flu which required more time to clean up incidents of vomiting and other resident needs. Claimant misread the computer record regarding the length of time the call light had gone off because it was in military time and it was daylight savings time. The claimant was working as nurse aide, nurse and shift supervisor. The facility had 61 residents that evening. The staff consisted of the claimant, and 3 nurse aides instead of 1 nurse and 4 aides as would be required to have a full staff.

When claimant became aware of the resident whose call light had been on she went to assist the resident. She apologized to the resident but the resident refused to let the claimant take her to the bathroom. Claimant felt that it was best to leave the resident's room to allow the resident to calm down. As she left she heard the resident speaking to someone on the telephone, claimant returned to the room and spoke to the 911 operator and explained that the facility was

short-staffed. The claimant then assisted the resident to the toilet. Claimant continued to check on the resident throughout the rest of her shift. When the claimant returned to the nurse's station she discovered the battery in her radio was not working so she changed it.

The claimant had been previously warned on three occasions for errors in her job performance.

**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.

Mere inefficiency and good faith errors in job performance are not deemed misconduct. Nor are isolated instances of negligence. In this case the claimant had received prior warnings for errors in her job performance. The last incident escalated in seriousness due to a combination of errors or instances of negligence. The claimant did not check the battery in her radio when she came on for her shift this led to a resident resorting to calling 911 for assistance. The claimant failed to properly read the time log to correctly record the length of time the call light went off. The claimant made an inappropriate reference to a resident to a coworker. The combination of these instances of negligence and this instance of inappropriate behavior in light of the prior warnings is sufficient to establish disqualifying job misconduct.

**DECISION:**

The decision of the representative dated February 24, 2011, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided claimant is otherwise eligible.

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Ron Pohlman  
Administrative Law Judge

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Decision Dated and Mailed

rrp/css