

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LASTOSHIA L THOMAS**  
Claimant

**APPEAL NO: 12A-UI-13636-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARMELITE SISTERS FOR THE AGED**  
Employer

**OC: 10/21/12  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated November 16, 2012, reference 01, that held she was discharged for misconduct on October 13, 2012, and benefits are denied. A telephone hearing was held on December 13, 2012. The claimant participated. Laura Williams, HR Director, participated for the employer.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on August 8, 2012, and last worked for the employer as a full-time C.N.A. on October 13. The claimant considered an employee in training during her first 90-days of employment. She received an employee handbook that contains the employer policy. Job abandonment is grounds for immediate discharge.

Claimant had been working the dementia unit on 2 North when she reported for the evening shift shortly before 10:00 p.m. on Saturday, October 13. A supervisor advised claimant she was being moved to the resident unit 2 South. Claimant objected stating she didn't think she had to float to this work unit, and she was uncomfortable as she did not know the residents. She was advised that another C.N.A. scheduled for 2 South had not arrived.

Claimant reported to 2 South where she continued voicing her concerns about working this unit with a nurse. About 10:15 p.m. claimant told the nurse she was leaving and clocked-out. The next morning she called the supervisor who moved her and was told she was fired for leaving work.

Human Resources called claimant in on Monday where the employer did listen to claimant about what happened. She was told the needs of the employer had dictated the move and

there was no policy that a new employee would be exempt from floating. The employer considered claimant's act of leaving a voluntary termination for job abandonment.

### **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.

The administrative law judge concludes the employer has failed to establish claimant was discharged for misconduct in connection with employment on October 13, 2012.

While the employer policy is controlling on the decision to terminate employment it is not when determining whether claimant is entitled to receive unemployment benefits.

Claimant refused a work assignment that led to her clocking out and leaving work. She immediately called the supervisor the following morning to discuss her issue only to learn she was fired. Claimant's act is not job abandonment that the employer characterizes as a voluntary quit but a refusal to perform work. The employment termination is a discharge.

Job disqualifying misconduct is not established. Claimant was a new employee in training who had worked and become familiar with one work unit. She knew the residents and understood their needs. She immediately voiced her reservations to the supervisor who requested she move (float) to a different work unit. She did report to the work unit where her concerns became

exacerbated when she learned from a nurse that the other C.N.A would not be there for a period of time. She did advise the nurse she was clocking out and leaving.

While claimant's decision to leave might have been poor judgment it was not a deliberate work refusal that constitutes job disqualifying misconduct. It must be considered from the viewpoint of a new employee in training faced with a work situation where she reasonably questioned whether she could do it alone.

**DECISION:**

The department decision dated November 16, 2012, reference 01, is reversed. The claimant was not discharged for misconduct on October 13, 2012. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/tll