

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**STEVEN L CARPENTER
1025 – 22ND ST
ROCK ISLAND IL 61201**

**FEJERVARY HEALTH CARE CENTER INC
C/O EMPLOYERS UNITY INC
PO BOX 749000
ARVADA CO 80006-9000**

**Appeal Number: 04A-UI-06182-DWT
OC: 05/09/04 R: 12
Claimant: Respondent (1/R)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Fejervary Health Care Center, Inc. (employer) appealed a representative's May 27, 2004 decision (reference 01) that concluded Steve L. Carpenter (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 28, 2004. The claimant participated in the hearing. Lucie Hengen, a representative with Employer's Unity, Inc., appeared on the employer's behalf with witnesses, Diane Bajc, the director of nursing, and Gary Martin, the administrator. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on August 22, 2004. He worked as a full-time certified medication and nurse's aid. In mid-March 2004, a resident accused the claimant of physically abusing her. The employer reported the complaint and suspended the claimant from work on March 17, 2004. After the employer received a report that the employer could not employ the claimant, the employer terminated the claimant's employment on April 16, 2004. The claimant denied that he abused the resident.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges claimant for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

Under Iowa law the employer is prevented from testifying about the investigation concerning the resident's complaint. As a result, the evidence presented during the hearing does not establish that the claimant committed work-connected misconduct. As of May 9, 2004, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements.

The employer raised an issue of whether the claimant is able to and available to work because he is not allowed to currently work as a certified nurse's aid and may be receiving workers' compensation. The issue of whether the claimant is able to and available for work is remanded to the Claims Section to investigate and issue a written decision to both parties.

DECISION:

The representative's May 27, 2004 decision (reference 01) is affirmed. The employer discharged the claimant, but did not establish that the claimant committed work-connected misconduct. As of May 9, 2004, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant. An issue of whether the claimant is able to and available for work is remanded to the Claims Section to investigate and issue a written decision to both parties.

dlw/kjf