

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHAWNA MELVIN
Claimant

APPEAL NO. 10A-UI-05594-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GENESIS HEALTH SYSTEM
Employer

**Original Claim: 03/14/10
Claimant: Appellant (1)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Shawna Melvin (claimant) appealed an unemployment insurance decision dated April 8, 2010, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Genesis Health System (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 2, 2010. The claimant participated in the hearing with representatives Andre Harrison and Evan George. The employer participated through Kristin Nicholson, Human Resources Coordinator, and Jill Goodman, Director of Nursing. 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:

The issue is whether the employer discharged the claimant for work-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time certified nurse's aide (CNA) from October 22, 2007 through March 12, 2010, when she was discharged for violating a resident's rights. Another CNA was taking care of a female resident on March 5, 2010, when the resident asked her to look at a bruise on the lower right leg by the resident's ankle. The CNA saw the bruise and asked the resident how it happened. The resident reported that the claimant grabbed her legs and yanked her out of bed during the night when she had to go to the bathroom.

The CNA took the resident to the director of nursing to show the bruises to the director. The resident explained the same story to the director of nursing and said it happened the night before last. The director noticed an oval shaped bruise on the outer aspect of the resident's right mid-lower leg and three smaller round bruises on the inner part of the same leg.

The employer conducted an investigation to confirm the claimant was working the night shift starting on March 3, 2010 and ending on March 4, 2010, and she was. The employer called the claimant in early on the night of March 5, 2010 to discuss the matter with her. The claimant denied being rough with the resident. She had been previously warned for not meeting the standards of care with residents. The employer suspended her on March 5, 2010 and subsequently discharged her on March 12, 2010.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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.

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 claimant was discharged on March 12, 2010 for failing to meet the required standards of care when caring for a resident. She had previously been warned about the same issue. Although the claimant denies being rough with a resident, the resident had bruises and she reported the claimant had caused them. The employer relied on the resident's statements, as there was no known reason for the resident to falsify the name of

the person who caused the bruises. The employer has met its burden. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated April 8, 2010, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw