

**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**

**MICHELLE L REINERT
32231 – 300TH ST
UNION IA 50258-8069**

**GRANDVIEW HEIGHTS INC
910 E OLIVE ST
MARSHALLTOWN IA 50158**

**Appeal Number: 06A-UI-04165-LT
OC: 03-26-06 R: 02
Claimant: Appellant (1)**

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 is 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)

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

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the April 11, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on May 2, 2006. Claimant participated. Employer participated through Craig Koonce, Denise Atkins, Terri Lippincott, and Corrie Brown. The administrative law judge took judicial notice of the administrative record.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time charge nurse through March 27, 2006, when she was discharged. On March 22 CNA Lippincott was transferring resident Roger with a gait belt from his wheelchair to an easy chair and he sat down before the chair was ready so she lowered him to the floor. Megan helped her get him back into the wheelchair and Lippincott took him to the nurse's

station and reported the incident to claimant. Lippincott told claimant he did not get hurt or hit his head but claimant failed to write a report that the resident fell to the floor and did not make a physical assessment. Employer's policy requires a CNA to report incidents of residents falling to charge nurse, who is to complete an assessment and then report the issue, in the resident's chart and possibly to the state investigatory agency. Tom Hoskins, administrator, confronted claimant who recalled Lippincott did not report the resident was on the floor but was sliding and she had trouble "scootching" him back.

Denise Atkins, medical records clerk, was present at the nurse's station when Lippincott reported to claimant. Lippincott later sought an incident report form from Atkins and left it at the desk to complete the next day. When Lippincott revisited the issue with claimant, claimant told her not to report it since they would both get in trouble because claimant did not do an assessment and Lippincott let him fall. Lippincott then reported the events to DON and Craig Koonce, Human Resources Manager.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. EAB*, 531 N.W.2d 645 (Iowa App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990).

Claimant's stark failure to follow the reasonable mandatory reporting procedure for resident falls and her attempt to keep Lippincott quiet to avoid potential discipline is evidence of willful disobedience of employer's rules established for the health and safety of residents and is misconduct. Benefits are denied.

DECISION:

The April 11, 2006, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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