

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KIMBERLY M SOUKUP**

Claimant

**APPEAL NO. 09A-UI-15155-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GOOD SAMARITAN SOCIETY INC**

Employer

**OC: 08/30/09**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Good Samaritan Society, Inc. filed a timely appeal from a representative's decision dated October 1, 2009, reference 01, which allowed benefits based upon the claimant's separation from Good Samaritan Society, Inc. After due notice, a telephone hearing was scheduled for and held on November 9, 2009. The claimant participated personally. The employer participated by Laurie Welch, Human Resource Director; Mr. Layne Gross, Administrator; and Ms. Gwen Musick, Director of Nursing. Employer's Exhibits One through Six were received into evidence.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having considered the evidence in the record, finds: Kimberly Soukup was employed as a part-time certified nursing assistant for Good Samaritan Society from October 29, 2008 until September 2, 2009 when she was discharged from employment.

The claimant was discharged after the employer investigated an allegation that Ms. Soukup and another certified nursing assistant had not followed proper lifting instructions in moving a resident on August 31, 2009. The employer had received a report that Ms. Soukup and a CNA had lifted a resident manually together instead of using the required mechanical lifting device. Residents are evaluated by the facility's physical therapy department and the method of transferring residents is specified on a daily group assignment sheet that is presented to all CNA's and other workers at the time their shifts begin. The care facility requires that employees follow the mandated method of transfer in order to avoid injury to both the employees and to the residents.

On the night in question the claimant was requested to move the patient from a wheelchair into bed so that a nurse on duty could examine the resident for bruising. Although the resident had been listed as being required to be transferred by the use of a "Hoyer" mechanical lifting device,

Ms. Soukup and a fellow aide manually transferred the resident. The transfer was observed by another employee who reported the matter to management.

The employer investigated and determined that the nurse on duty had not instructed a manual transfer but had made a request that a "transfer" take place. The other certified nursing assistant received a written warning. A decision was made to terminate Ms. Soukup because she had previous warnings for attendance and because the employer had received another complaint that evening about the timing and the manner in which Ms. Soukup had assisted another resident.

The claimant denies receiving adequate training and denies that the daily group assignment sheet for the night in question listed only a Hoyer transfer. It is the claimant's belief that the matter of transferring was optional allowing CNA's to either use the Hoyer device or to provide a "double transfer" to insure the safety of the resident. Ms. Soukup had been previously warned and the claimant's attendance and punctuality dramatically improved following warning. Ms. Soukup denies providing assistance to another resident late or being rude. It is the claimant's position that she was on break at the time and her responsibilities had been taken over by a different CNA.

#### **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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant but whether the claimant is entitled to unemployment insurance benefits. Infante v. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant the denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The evidence in the record establishes that the claimant was reasonable in her belief that transferring patients with the assistance of another aide would insure the safety of the patients as well as the individuals assisting the patients. When ordered to transfer the patient by the nurse on duty, Ms. Soukup believed at the time, that she was following acceptable manner of accomplishing the task and did not believe a Hoyer lift was required. The previous warning for attendance infractions did not relate directly to the basis for the claimant's discharge on September 2, 2009. The administrative law judge notes that the other aide involved in the same transfer was not discharged but only received a disciplinary action.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

While the decision to terminate Ms. Soukup may have been a sound decision from a management viewpoint, evidence sufficient to establish intentional disqualifying misconduct warranting the denial of unemployment insurance benefits has not been shown. Benefits are allowed.

#### **DECISION:**

The representative's decision dated October 1, 2009, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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