

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AMIE L FARRELL**  
Claimant

**APPEAL NO. 09A-UI-03573-E2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RISEN SON CHRISTIAN VILLAGE**  
Employer

**Original Claim: 01/18/09  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a representative's decision dated February 27, 2009, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 31, 2009. The employer participated by Rose Marie Koons, Director of Nursing; Debra Wise, Human Resources Manager; and Cindy Hamilton, Unit Manager. The claimant failed to respond to the hearing notice and did not participate.

**ISSUE:**

The issue in this matter is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds: The claimant last worked for the employer on December 1, 2008 and was discharged on December 15, 2008. The claimant was a Certified Nurse Assistant (CNA) providing care to residents in a nursing home. The employer received a complaint from a resident that the claimant was rough with that resident when assisting her with toileting and putting her to bed. Another CNA was present at the time the claimant put the resident to bed and told Ms. Hamilton the claimant was a little rougher than she should have been. Three other residents stated the claimant was short with them and they thought she was rude. One of those residents thought the claimant was rougher than the other "girls." The claimant received a warning on October 15, 2008 about inappropriate language at the nurses' station. She received a warning on November 19, 2008 for failure to follow proper procedure when taking care of residents. The employer did not report the claimant's conduct as elder or dependant adult abuse.

## REASONING AND CONCLUSIONS OF LAW:

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 gravity of the incident, number of policy violations, and prior warnings are factors considered when analyzing misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him 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).

The employer has failed to prove misconduct. The evidence at best shows unsatisfactory conduct. The other CNA who witnessed the claimant putting the resident to bed told the employer she was a little rougher than she should have been. No injury resulted and no report was made for the incident. The resident complained of her treatment in being cared for after toileting, but there is not sufficient evidence to determine if the claimant committed misconduct in her care. The employer has failed to show a last act that constitutes misconduct.

**DECISION:**

The decision of the representative dated February 27, 2009, reference 01, is reversed. The claimant is eligible to receive unemployment insurance benefits, provided the claimant meets all other eligibility requirements.

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James Elliott  
Administrative Law Judge

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Decision Dated and Mailed

jfe/kjw