

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CONNIE BACON**  
Claimant

**APPEAL NO. 08A-UI-06032-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CHRISTIAN RETIREMENT HOMES INC**  
Employer

**OC: 05-25-08 R: 04  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the June 26, 2008, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 16, 2008. The claimant participated in the hearing. Kathy Walker, Human Resources Director, participated in the hearing on behalf of the employer.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time LPN for Christian Retirement Homes from March 10, 2008 to May 23, 2008. She worked the 10:00 p.m.-to-6:00 a.m. shift. On May 19, 2008, the claimant went to work and received the shift report from the second shift nurse. The nurse told her that a resident had fallen, X-rays were taken, the resident fractured her hip, and the doctor had been contacted. She told the claimant to position pillows around the resident's hip and to maintain comfort measures and, consequently, the claimant believed those were the doctor's orders. The second shift nurse had not contacted the doctor and told the employer she assumed the claimant had done so, but neither the claimant nor the second shift nurse verified that the doctor was called with the other party. The employer received a fine from the state in early May after another resident fell and the situation was not properly handled. The employer held a meeting after that incident to discuss the procedures for calling a physician. As a result of the events of May 19, 2008, the employer terminated the claimant's employment. The claimant received a written warning in May 2008 for failing to do a scheduled change of a Foley catheter and marking that it was done.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 proving disqualifying misconduct. 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 substantial and 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). The claimant relied on the second shift nurse's report that the physician had been contacted regarding the resident who fell and broke her hip and demonstrated that belief by following the second shift nurse's directions to position pillows around the hip and implement comfort measures for the resident. While the claimant may have failed to adequately communicate with the second shift nurse or follow up in the chart, this was an isolated incident and does not appear to be intentional or willful misconduct as that term is defined by Iowa law. Therefore, the administrative law judge must conclude that the claimant's actions do not rise to the level of disqualifying job misconduct. Benefits are allowed.

**DECISION:**

The June 26, 2008, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

---

Julie Elder  
Administrative Law Judge

---

Decision Dated and Mailed

je/kjw