

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHARLINE JOHNSON
Claimant

APPEAL 25A-UI-03315-CS

**ADMINISTRATIVE LAW JUDGE
DECISION**

LUTHER CARE SERVICES/HOMES FOR
Employer

**OC: 04/06/25
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

On May 1, 2025, the claimant/appellant filed an appeal from the April 28, 2025, (reference 01) unemployment insurance decision that denied benefits based on the claimant being discharged on March 28, 2025 for violation of a known company rule. The parties were properly notified about the hearing. An in person hearing was held at 6200 Park Avenue, Suite 100, Des Moines IA 50321 on May 13, 2025. The claimant participated. The employer participated through Director of Operations, Terry Cooper. Executive Director of Human Resources and Operations, Deb Nowachek, and Chief Nursing Officer, Kathy Bush, testified on behalf of the employer. Employer's Exhibits 1, 2, 3, 4, 5, 6, 7, 8, and 9 were admitted into the record.

ISSUE:

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began working for the employer on October 28, 2010. The claimant last worked as a full-time Certified Medical Assistant.

The employer has a facility named "The Gardens." The Gardens is a building made up of three floors. The first and second floor are assisted living apartments; the third floor is a locked memory care unit. Residents of the assisted living apartments can leave the building freely unless there is a care/service plan restricting their ability to leave.

The employer has multiple marquees set up throughout their building. A marquee is a sign that lights up and notifies staff when call lights are pushed for particular rooms. On the first floor the employer has multiple doors with alarms on the doors. When a door is opened then it will trip an auditory alarm on the door and then will also send a mass notice to all the staff with pagers and to the marquees. When staff receive a notice on the pager the pager will vibrate or make a

sound and a message will come across the pager with the room number or door that is alerting/alarming. If a door is tripped on the first floor then the auditory alarm can only be audibly heard on the first floor.

The employer has a door alarm policy that in relevant part states:

“Staff will respond timely to all door alarms.

Procedure:

1. Check your system to determine the location of the alarm that is sounding. This will indicate the door that has been opened.
2. Staff must immediately respond to all door alarms.
3. Attempt to determine what set off the alarm (i.e. did tenant exit building, did a visitor enter or exit the building without disengaging the alarm, etc.)
4. Open the door and look to see if a tenant is in sight. Look outside and quickly scan the area. Always assume that it is a tenant that activated the alarm. Never assume a visitor or another tenant set off the alarm just because they are in sight. A tenant may have exited the same time.
5. If it is a Wanderguard alarm that is activated by a specific bracelet device, immediately locate your tenants who have these bracelets in place.
6. If a tenant is unaccounted for, immediately implement your Missing Tenant policy.
7. The Assisted Living will have a process to check door alarm.” (Exhibit 6)

The employer has a Missing Tenant policy that in relevant part states:

“The facility has a written plan with procedure to be followed in the event a tenant is missing.

Purpose

1. Tenants will be encouraged to notify assisted living staff when out of the building.
2. In the event a tenant is missing, the following steps shall be taken by staff:
 - a. Search outside the facility, specifically patio or sitting areas.
 - b. Search the tenant’s apartment. Look in closets, bathrooms, and under the bed.
 - c. Search lounges, restrooms, laundry room, and other common areas of the assisted living complex.
 - d. Conduct a walk-through of other tenant apartments.
 - e. Contact family and/or an emergency contact to make them aware of the missing tenant.

- f. The Director/Administrator, RN, or nursing designee should file a missing person's report with the police. To do so call 911 and be prepared to give an accurate description of the tenant.
 - g. Once the tenant is located, returned to the facility, and his/her safety assured, the Director/Administrator, RN or nurse designee should contact the tenant's family and physician.
 - h. Perform and document an assessment of the tenant, and complete all appropriate documentation in the tenant's chart. Determine tenant's cognitive impairment and level of supervision required at the time of the incident.
 - i. Determine the need for increased safety checks. Safety checks must be identified on the tenant's service plan.
 - j. Complete the Incident Report form.
3. The Director/Administrator and/or RN should evaluate situation to determine if this is a reportable situation to the Department of Inspections and Appeals." (Exhibit 7, pgs. 1-2).

The claimant was aware of these policies and signed an acknowledgement of them on June 27, 2024. (Exhibit 9).

Each tenant at the facility has a service plan. The service plan is developed "for each tenant based on a health, functional, and cognitive evaluation." (Exhibit 8, pg. 1). The service plan is designed "to meet the specific needs of the individual tenant." (Exhibit 8, pg. 1). The purpose of the plan is to "communicate to all levels of staff specific service needs and/or requests of the individual tenant." (Exhibit 8, pg. 1). Each time a staff member clocks in for their shift they have a program that will set out their assignments for their shifts and give them any updates or specific instructions for the tenants' care plan for the tenants they are caring for on their shift.

On Sunday, March 23, 2025, the claimant began her shift at 2:00 p.m. The claimant was scheduled to work a 16 hour shift until the following morning at 6:00 a.m. The employer scheduled the claimant to cover the first two assisted living floors. The claimant worked with another employee on these floors until 10:00 p.m. Beginning at 10:00 p.m. the claimant was the only staff member to cover the first two floors. There was another staff member named Pelo staffed for the third floor memory care unit. The assisted living floors do not require higher staffing because the residents are independent. The employer has an undocumented policy that employees that are staffed to cover the first two floors are expected to be on those two floors the entire time of their shift. The claimant was not aware of this policy.

When the claimant arrived at work she was notified that two residents under her care were placed on a care plan that required her to check on them at scheduled times. The claimant was required to check on one male and one female resident at 10:00 p.m., 12:00 a.m., 2:00 a.m., and 4:00 a.m. The claimant was required to check on the male resident due to him being a fall risk. The resident had fallen earlier in the day and the care plan was updated the morning of March 23rd to require the two hour checks. The checks required the claimant to visually look in on the residents to make sure they had not fallen or needed care.

The claimant did not do the 10:00 p.m. check on the residents. At 11:17 p.m. the claimant completed the check of the two residents. The claimant observed the male resident sleeping in

his recliner as he normally does when he sleeps. After performing the checks the claimant took a cart and went up to the third floor to perform her evening tasks such as laundering napkins, rolling silverware, medical planning, vacuuming, etc. However the dishwasher, clean silverware, and the laundry are located on the first floor. Pelo observed the claimant wrapping the silverware on the third floor.

The claimant remained on the third floor and did not return to the first floor until 2:20 a.m. When the claimant exited the elevator she heard a door alarm sounding. The claimant went into the dining room where the alarm was sounding. The claimant was concerned that an outsider had gotten inside the building. The claimant called Pelo to notify him of the alarm. The claimant then went to the two residents' rooms that required the two hour checks to verify they were present. The female resident was present, the male resident was not in his room. The claimant began searching for the male resident in his room and in the facility. The claimant called Pelo again for him to come assist her in finding the male resident. After checking the facility the claimant was not able to find the resident. The two employees went outside and could not see the resident outside. The claimant notified the police and management that a resident had eloped. The resident was found sometime between 3:00 a.m. and 4:00 a.m. approximately a block and a half away from campus. The resident had slight bruising and had mild hypothermia. He returned to the facility on March 24th.

Once the employer was notified the resident had eloped, they began an investigation into the matter. The employer reviewed the video footage and observed the male resident exit his room on the first floor at 1:12 a.m. (Exhibit 1). The resident attempted to exit through four different exits before exiting through the dock door located by the dining room. (Exhibit 1). The male resident exited through the door at 1:28 a.m. (Exhibit 1). The resident was leaving because he was trying to find his cat that had been taken from him a couple days earlier. The resident was observed going down the stairs to exit the building, falling, and then getting up and walking across the campus and exiting off the campus. The footage confirmed the claimant was on the third floor beginning at 11:17 p.m. until 2:20 a.m.

While reviewing the video the employer noticed sometime between 10:00-10:30 p.m. a resident put on their call light. The claimant did not respond to the light. The video footage shows the resident's family member going up and down the two floors trying to find assistance to obtain medication. The family member was not able to locate the claimant.

As part of the investigation the employer reviewed the alarm log and had it analyzed. They discovered that the data on the alarm log had been deleted for the time period beginning after 8:34 p.m. on March 23rd through March 24th at 6:37 a.m. They discovered that the marquee was not working right and did not alert when the door was alarmed. The claimant did not receive a page notifying her that the resident needed assistance at approximately 10:00 p.m. The claimant did not receive a page notifying her that the door alarm was going off. Pelo also did not respond to the door alarm.

When the employer reviewed the care plan logs the claimant logged that she completed her two hour checks each time including at 10:00 p.m. 12:00 a.m., 2:00 a.m., 4:00 a.m., and 6:00 a.m. The claimant did not log this immediately after performing the checks but did them at the end of her shift. The claimant was emotionally upset at the time she entered her checks into the log.

When a tenant elopes the employer is legally obligated to notify the Iowa Department of Inspections, Appeals, and Licensing (DIAL) so they can perform an investigation. During the investigation the employer has to validate that all of the records are correct and DIAL

independently reviews them to make sure the records are correct. If records are falsified the employer can be legally liable for fines and issued citations by the State of Iowa.

On March 28, 2025, the employer discharged the claimant for the tenant elopement and for falsification of records. (Exhibit 1). The claimant did not have prior verbal or written warnings for a resident eloping or for falsifying documents.

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. Benefits are denied.

Iowa Code section 96.5(2)a and d provide:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

d. For the purposes of this subsection, "*misconduct*" means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is 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. Misconduct by an individual includes but is not limited to all of the following:

(1) Material falsification of the individual's employment application.

(2) Knowing violation of a reasonable and uniformly enforced rule of an employer.

(3) Intentional damage of an employer's property.

(4) Consumption of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in a manner not directed by the manufacturer or a combination of such substances, on the employer's premises in violation of the employer's employment policies.

(5) Reporting to work under the influence of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in an off-label manner, or a combination of such substances, on the employer's premises in violation of the employer's employment policies, unless the individual is compelled to work by the employer outside of scheduled or on-call working hours.

- (6) Conduct that substantially and unjustifiably endangers the personal safety of coworkers or the general public.
- (7) Incarceration for an act for which one could reasonably expect to be incarcerated that result in missing work.
- (8) Incarceration as a result of a misdemeanor or felony conviction by a court of competent jurisdiction.
- (9) Excessive unexcused tardiness or absenteeism.
- (10) Falsification of any work-related report, task, or job that could expose the employer or coworkers to legal liability or sanction for violation of health or safety laws. (emphasis added).**
- (11) Failure to maintain any licenses, registration, or certification that is reasonably required by the employer or by law, or that is a functional requirement to perform the individual's regular job duties, unless the failure is not within the control of the individual.
- (12) Conduct that is libelous or slanderous toward an employer or an employee of the employer if such conduct is not protected under state or federal law.
- (13) Theft of an employer or coworker's funds or property.
- (14) Intentional misrepresentation of time worked or work carried out that results in the individual receiving unearned wages or unearned benefits.

Iowa Admin. Code r. 871-24.24(3) provides:

- (3) *Report required.* The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence are not sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct is resolved.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 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 Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). "Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits." *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000).

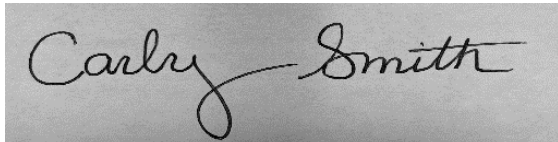
A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. 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 Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct.

App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus is on deliberate, intentional, or culpable acts by the employee.

In this case one of the reasons the claimant was discharged was for falsifying documentation. In the documentation the claimant indicated that she completed each of her two hours checks. The claimant acknowledges that she did not perform the 10:00 p.m. check and then documented that she performed the checks during the time that the resident was gone. The claimant acknowledges that this is incorrect and attributes it to being upset at the time she was completing the documentation. Unfortunately, the documentation in this situation does matter and is significant due to the employer being subject to automatic investigation by the Department of Inspections, Appeals, and Licensing for resident elopement. This could also open the employer to monetary penalties and sanctions. Since the claimant did enter false information into the documentation the claimant is disqualified from unemployment benefits pursuant to Iowa Code section 96.5(2)(d)(10). Unemployment benefits are denied.

DECISION:

The April 28, 2025 (reference 01) unemployment insurance decision is AFFIRMED. The claimant was discharged on March 28, 2025 for substantial job-related misconduct. Unemployment insurance benefits funded by the State of Iowa are denied until the claimant has worked in and been paid wages for insured work equal to ten times their weekly benefit amount after March 28, 2025, and provided they are otherwise eligible.

A rectangular box containing a handwritten signature in cursive script that reads "Carly Smith".

Carly Smith
Administrative Law Judge

May 16, 2025
Decision Dated and Mailed

cs/scn

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

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.

AN APPEAL TO THE BOARD SHALL 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or 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.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.