

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSICA PERRY
Claimant

APPEAL NO. 08A-UI-00361-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

GRANDVIEW HEIGHTS INC
Employer

**OC: 12-09-07 R: 02
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 2, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on January 28, 2008. The claimant participated in the hearing with witness Courtney Gonzalez, Housekeeping. Laurie Kramer, DON, 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 charge nurse for Grandview Heights from October 16, 2006 to December 10, 2007. She was discharged for numerous nursing violations. On May 22, 2007, she was counseled for clocking in too early and earning unauthorized overtime. On June 7, 2007, she was counseled after she left a liquid supplement in an unattended resident's mouth when the resident was a choking threat. On June 9, 2007, she was counseled for failure to help with direct resident care duties on the unit she was assigned. On June 12, 2007, she was counseled for failure to place a wander-guard monitor on a resident and failure to tell the next shift about the situation. On June 12, 2007, she was also counseled for failure to chart or report to the oncoming nurse about a sick resident. On June 13, 2007, she was counseled for not performing a treatment on a resident for the prior two days. On June 21, 2007, she received a written warning and suspension for leaving a breathing treatment solution on a resident and telling a CNA to turn it off when the CNA returned to the room which was outside the scope of the CNA's scope of practice. On July 17, 2007, she was counseled for writing a doctor's order on the bottom of a lab sheet instead of on a doctor's telephone order so the order was not sent to the doctor for his signature and the order did not show up on the resident's chart. On August 9, 2007, she received a written warning and was placed on probation for 30 days after taking an order to hold a resident's blood thinner and not marking it on the chart or removing it from the medication cart so the resident received the blood thinner. The employer told the claimant if she had any questions she should ask the nursing supervisor and that further

violations could result in termination of employment. On October 10, 2007, she received a written warning about an order she received by fax for an x-ray on a resident but she failed to do the order for the x-ray causing the resident, who expected to return to skilled nursing based on the results of that x-ray and missed out on therapy for two months because the order was not done, to suffer harm. Her actions were a violation of the process of writing an order on the resident's chart. The claimant signed an agreement at that time stating any further incident would result in termination. On December 7, 2007, the claimant left without finishing her documentation. Another nurse reported the situation to DON Laurie Kramer and Ms. Kramer called the claimant at home and asked her to return to the facility and complete her paperwork. The claimant said she did not have a ride and asked to do it the following morning. The claimant went in the next afternoon and finished her documentation and on December 10, 2007, the employer met with the claimant and terminated her employment because it felt she was compromising resident care. The claimant testified she was quite busy December 7, 2007, and did not feel she received enough help that day and was upset because she was moved from the east to west shift and charge nurse to medication nurse frequently but another nurse did watch the dining room for her for 45 minutes to an hour December 7, 2007, and she was required to effectively "float" on occasion because she was the last person hired on the day shift.

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.

The claimant was counseled, received written warnings and was suspended a total of ten times during her 14 months of employment. Most of her errors were due to carelessness and/or a willful disregard of her duties. She was given several opportunities to improve her performance but failed to do so and does not take responsibility for the errors in question. Consequently, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

DECISION:

The January 2, 2008, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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