

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**MARLA F BRODERSON
PO BOX 863
ELK POINT SD 57025-0863**

**MERCY HEALTH SERVICES – IOWA CORP
c/o EIDE BAILLY LLP
3999 PENNSYLVANIA AVE STE 110
DUBUQUE IA 52002-2639**

**Appeal Number: 06A-UI-06327-LT
OC: 05-14-06 R: 12
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

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.

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.

YOU MAY REPRESENT yourself in this appeal or you may 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. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the June 5, 2006, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on July 10, 2006. Claimant participated. Employer participated through Beckie Wahlberg. The issue is whether claimant was discharged for reasons related to job misconduct. Employer's Exhibit 1 was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time LPN from May 15, 2000 through May 16, 2006 when she was discharged. On May 15, 2006, a patient, Tom M., complained that his dressing was not changed, it was saturated with old drainage and had an odor. His son also commented his father had "the worst nursing care he had ever received." He complained that claimant did not

come back after she said she would, she did not speak to him appropriately (uncaring and lack of responsiveness) and was not suited to this job. Other nurses Kim, Carrie and Stephanie cleaned up after her and reported the family had complaints about her care. Stephanie spoke directly to his son and relayed his complaints and his desire not to have claimant assigned to his father again. (Employer's Exhibit 1, pages 2 and 3). This patient was assigned to her at approximately 3:00 p.m. and she knew by 4:00 p.m. the dressing needed to be changed. She was removed from that patient assignment at the son's request by 7:00 p.m. and at that point the dressing still had not been changed. She had authority over the nurse's aides, but did not utilize that authority to obtain assistance.

On January 27, 2006, employer warned claimant in writing about a patient complaint after she took two hours to administer pain medication and was "very rude" to another patient on January 25. (Employer's Exhibit 1, pages 7 and 8). A counseling disciplinary action notice was issued on April 20, 2005 after a patient complained she confronted her about having "reported me," rudeness to the patient's family and delay of requested pain medication. (Employer's Exhibit 1, pages 9 and 10).

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 § 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than she was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. EAB*, 531 N.W.2d 645 (Iowa App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990).

Patient care, both physical and emotional, is a hospital's primary function. Claimant's repeated patient complaints, the most recent specifically naming her after having been warned twice, is evidence of her willful conduct contrary to the best interests of the employer's, and by extension, her patients. The most troubling aspect of these complaints was not so much the alleged rudeness, but was the delay of pain medication and failure to change a draining wound dressing in a timely fashion. This is considered misconduct and benefits are denied.

DECISION:

The June 5, 2006, reference 02, 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.

dml/cs