

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CINDY L BONORDEN
Claimant

APPEAL NO. 10A-UI-12738-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WESTERN HOME COMMUNITIES INC
Employer

**OC: 08/15/10
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Cindy Bonorden, filed an appeal from a decision dated September 8, 2010, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on November 29, 2010. The claimant participated on her own behalf. The employer, Western Home Communities, Inc. (Western Home), participated by Human Resources Assistant Lindsay Varney and Administrator Lisa Hoodjer. Exhibits One, Two, Three, Four, Five, A, B, and C were admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Cindy Bonorden was employed by Western Home from June 13, 2002 until August 11, 2010 as a part-time registered nurse. On February 11, 2010, she had received two written warnings for two separate incidents. One for failing to treat a dying resident and their family with “dignity and respect.” A family member complained the claimant had only been in the room once during the night and did not administer any pain medications or speak with the family. The claimant should have been taking the resident’s vital signs at least every two hours and only two were documented in an eight-hour shift. The other warning was for failing to address a resident’s report of a bed sore. The claimant maintained she had treated the bed sore but did not document the treatment in the nurse’s notes. Without documentation there is no way to establish the treatment was given if it became an issue.

On July 29, 2010, a resident had fallen and the claimant failed to follow appropriate post-fall protocol. That requires a call to the resident’s doctor’s office or answering service after the resident had been assessed and stabilized. The fall occurred around 9:00 p.m. and the policy is to leave a message with the answering service and fax the doctor’s office. Ms. Bonorden did neither of these until 7:00 a.m. the next morning. She felt she did not have to do this because the resident’s family had said to wait until the doctor’s office opened at 8:00 a.m. but the

claimant had not notified the family until shortly before 7:00 a.m. either. Ms. Bonorden did not put in the nurse's notes that she had done either of these things.

The claimant had given report to the oncoming day nurse but the nurse felt it was inadequate. The day nurse spoke with the resident who had a large, swelling bruise from the fall and who requested pain medication. The resident said she had been "too scared" to ask the night nurse for pain medication. The day nurse informed the doctor's office and it was later determined the resident had a broken bone.

Ms. Bonorden was on vacation after that date and did not return until August 11, 2010. At that time she was discharged for failing to observe proper protocol for reporting a fall to the family or the doctor, not recording the necessary information in the nurse's note and not following proper protocol for pain management.

REASONING AND CONCLUSIONS OF LAW:

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 obligation to proper care for all residents. These cares are determined by policy and procedures set out for all employees to read and abide by. The claimant failed more than once to follow procedure, including failing to document the treatments given. But if the treatment does not appear in the documentation, there is no way to prove that it did in fact occur and the employer may be held liable for failure to give proper care.

The final incident was when the claimant failed to notify the resident's doctor and family about the call and did not offer pain relief after the resident was assessed. The claimant's conduct interfered with the employer's ability to provide the necessary, mandated care to its residents. This is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of September 8, 2010, reference 01, is affirmed. Cindy Bonorden is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs