

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

DEBORAH K DILLARD
4816 WALNUT
PLEASANT HILL IA 50327

MARY GREELEY MEDICAL CENTER
1111 DUFF AVE
AMES IA 50010

Appeal Number: 04A-UI-06081-H2T
OC: 05-02-04 R: 02
Claimant: Appellant (2)

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)

Section 96.5-2-a - Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 19, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on July 21, 2004. The claimant did participate. The employer did participate through Julie Schwery, Clinical Supervisor; Kate Motett, Lead Nurse and (representative); Patti Steelman, Human Resources Coordinator. Employer's Exhibit One was received. Claimant's Exhibit A was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a registered nurse part-time beginning November 29, 2001 through May 1, 2004 when she was discharged. The claimant was discharged for failing to chart her actions relating to patient care on April 27, 2004. The claimant admitted that she failed to chart a patient's use of a

PCA pump during her entire eight-hour shift. Additionally, the claimant failed to chart another patient's use of an epidural infusion pump during her entire eight-hour shift. Additionally, charting omission made by the claimant included her failure to document and administer a medication, her failure to update a care plan and her failure to check and chart the vital signs of another patient at 6:00 p.m. The claimant admits that she knew how to perform all of the functions required of her, including the charting, she alleges she failed to perform the required actions because she was too busy during her shift. The claimant remained on the floor for an hour and one-half after her shift to complete her charting, but forgot during that time period to chart the above deficiencies that were later noted by her Supervisor, Ms. Schwery.

When questioned about her actions on May 1, 2004 the claimant could only state that she was very busy during the shift and that she forgot to chart the actions at the end of her shift. The claimant performed the job to the best of her ability. She had been previously disciplined for deficiencies in her charting. She was discharged for neglect of duty that jeopardized the health and safety of patients in her care.

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.

The employer's evidence does not establish that the claimant deliberately and intentionally acted in a manner she knew to be contrary to the employer's interests or standards. There was no wanton or willful disregard of the employer's standards. In short, substantial misconduct has not been established by the evidence. The claimant forgot to chart the actions she took on behalf of patients during her April 27, 2004 shift. The evidence does not establish that she intentionally failed to chart, she just forgot. While the claimant's actions may justify her discharge, they cannot be found to support a finding that the claimant intentionally committed substantial misconduct. While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983).

Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979). Where an individual is discharged due to a failure in job performance, proof of that individual's ability to do the job is required to justify disqualification, rather than accepting the employer's subjective view. To do so is to impermissibly shift the burden of proof to the claimant. Kelly v. IDJS, 386 N.W.2d 552 (Iowa App. 1986). Inasmuch as she did attempt to perform the job to the best of her ability but was unable to meet the employer's expectations, no intentional misconduct has been established, as is the employer's burden of proof. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Accordingly, no disqualification pursuant to Iowa Code Section 96.5-2-a is imposed.

DECISION:

The May 19, 2004, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

tkh/kjf