

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**THUY MAI**  
Claimant

**CARE INITIATIVES**  
Employer

**APPEAL NO. 14A-UI-11205-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/21/14**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Thuy Mai (claimant) appealed an unemployment insurance decision dated October 15, 2014, (reference 01), which held that she was not eligible for unemployment insurance benefits because she was discharged from Care Initiatives (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 9, 2014. The claimant participated in the hearing. The employer participated through Cheryl Dreyer, Director of Nursing and Alyce Smolsky, Employer Representative. Employer's Exhibits One through Five were admitted into evidence.

**ISSUE:**

The issue is whether the claimant was discharged for work-related misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked as a full-time registered nurse from April 9, 2013, through September 24, 2014, when she was discharged for a repeated failure to perform her job duties. She received a verbal warning on September 26, 2013, for violations on September 13, 2013. The claimant failed to properly refrigerate a medication and gave the medication to a resident. She also failed to report a resident's low blood sugar to the doctor until eight hours after the fact, when it should have been done promptly.

A written warning was issued to the claimant on March 14, 2014, when she admitted a resident without documenting initial skin assessment pressure areas. Consequently, the resident did not receive the appropriate preventive nursing interventions for pressure wounds. A final written warning was issued to the claimant on July 2, 2014, for acting in an unprofessional manner. A resident's family member complained that she said, "He's a vegetable anyway" when referring to their family member. The claimant denies saying that but admits saying something about the resident being in a vegetative state. She also left medication out on the cart and failed to provide pain medication to a resident for almost four hours after the request was made.

The claimant was discharged after failing to provide proper care to a resident on September 19, 2014. The male resident had his colostomy bag changed and it was left on the bedside table. He put on his call light at 7:25 a.m. and when the claimant arrived, the resident asked for water, a change of robe and for the bag to be taken out of the room. The claimant said someone would come help him and left but no one arrived to help him. The resident put his light on again and the claimant responded with the same information. Even after repeated requests, the resident did not receive assistance until 10:10 p.m. The claimant contends that was not her job to take care of these types of duties.

#### **REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-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. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on September 24, 2014, for failing to provide proper care to the residents. Nursing home residents are generally elderly and dependent upon others for their care. Regardless of what was needed, the claimant was responsible for ensuring the residents' health and safety. She had ample notice she was not meeting the employer's standards for care of residents but continued to act in a manner which was contrary to the employer's and residents' interests. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

#### **DECISION:**

The unemployment insurance decision dated October 15, 2014, (reference 01), is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs