

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

SHIRLEY A CLINE
PO BOX 2
MYSTIC IA 52574

CARE INITIATIVES
c/o TALX – JOHNSON & ASSOC
PO BOX 6007
OMAHA NE 68106-6007

Appeal Number: 06A-UI-05478-DWT
OC: 04/30/06 R: 03
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)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Shirley A. Cline (claimant) appealed a representative's May 22, 2006 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Care Initiatives (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 13, 2006. The claimant participated in the hearing. Dawn Gibson, a representative with TALX, appeared on the employer's behalf with witnesses, Kyle Merry, the administrator, and Linda Staggs, the director of nursing. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on September 20, 2004. The claimant worked as a full-time registered nurse on the floor. Staggs became the claimant's supervisor and director of nursing on February 6, 2006.

Prior to Staggs becoming the director of nursing, the claimant received some written warnings. On May 10, 2005, the employer gave the claimant a final warning for failing to followup on or chart a resident who had been found in the parking lot. On August 5, 2005, the claimant received a verbal warning for failing to do a narcotic count. On September 29, 2005, the employer talked to the claimant about her failure to write down a physician's telephone order.

The claimant worked the weekend of April 22/23. The employer did not have insulin for a resident the morning of April 22. The claimant called the pharmacy and left a message for the pharmacy to deliver the insulin. The pharmacy did not deliver the insulin. The claimant then either personally monitored the resident's blood sugar or had other employees monitor this. The claimant did not record the results of the resident's blood sugar levels. The claimant did not contact the resident's physician when the insulin did not come. Insulin for this resident finally came later in the day. The next day, the employer did not have insulin for another resident. The claimant again called the pharmacy for insulin and a co-worker called the resident's physician.

The employer discharged the claimant on April 27 because she did not notify the resident's physician to find out what the physician wanted done under these circumstances, the claimant did not document any assessments of the residents or any blood sugar levels that were taken and the claimant did not inform Staggs or Merry about this incident.

A few weeks prior to April 22, the employer did not have insulin to give to a resident or residents at a prescribed time. A nurse gave directions to monitor the blood sugar level and to give the insulin to the resident when the insulin came. These people were not discharged. On April 22, the claimant did what she thought was best under the circumstances.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant knew, or should have known, the employer required her to document care she provided to residents. As a registered nurse, the claimant knew or should have known that if she did not document or make a record of what she had done, there was no proof she had done anything. The fact the employer did not have insulin for two residents was not the claimant's fault. But, the claimant should have contacted the resident's doctor when the insulin did not come. Since a similar incident occurred a few weeks earlier and the claimant understood employees just had to monitor the resident's blood sugar level and give the resident the insulin when it came, the claimant used poor judgment when she failed to contact the resident's doctor.

The primary problem in this case is the claimant's failure to document her assessments of the resident and any blood sugar level readings she obtained. The claimant's failure to record this information amounts to an intentional and substantial disregard of the employer's interests. The employer discharged the claimant for reasons constituting work-connected misconduct. As of April 30, 2006, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's May 22, 2006 decision (reference 01) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of April 30, 2006. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

dlw/cs