

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARLYS R HIGHLAND**  
Claimant

**APPEAL NO. 09A-UI-10791-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**OC: 06/14/09**  
**Claimant: Appellant (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

Marlys R. Highland filed a timely appeal from an unemployment insurance decision dated July 23, 2009, reference 01, that disqualified her for benefits. After due notice was issued, a telephone hearing was held August 12, 2009 with Ms. Highland participating and being represented by Ben Stansberry, Attorney at Law. Jennifer Coe of TALX UC eXpress appeared on behalf of the employer, Care Initiatives. Administrator Melanie Kempf and Charge Nurse Ashley Wilson testified. Employer Exhibits One through Three were admitted into evidence.

**ISSUE:**

Was the claimant discharged for misconduct in connection with her employment?

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Marlys R. Highland was employed by Care Initiatives from April 3, 2008 until she was discharged March 12, 2009. Ms. Highland is a licensed practical nurse who last worked as a charge nurse. On March 4, 2009 she charted a treatment that she did not perform. She indicated that she had changed the dressing on a resident, but she did not actually perform the treatment. Ms. Highland had received a verbal warning in 2008 for signing off on medications that were actually given by someone else. She received a written warning in February 2009 for giving the wrong medicine to a resident.

**REASONING AND CONCLUSIONS OF LAW:**

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with her employment. It does.

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 claimant acknowledged and could not explain the discrepancy in her charting and treatments in the final incident. She acknowledged receiving the prior verbal and written warning. This evidence persuades the administrative law judge that the claimant was discharged for misconduct in connection with her employment. Benefits are withheld.

**DECISION:**

The unemployment insurance decision dated July 23, 2009, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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