IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

JOHN K PULKRABEK Claimant **MERCY HEALTH SERVICES – IOWA CORP** Employer	**APPEAL 14A-UI-10883-L** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 09/21/14** **Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 10, 2014 (reference 01) unemployment insurance decision that denied benefits because of a discharge from employment. After due notice was issued, a hearing was held on February 24, 2015 in Dubuque, Iowa. Claimant participated. Employer participated through physical therapist Ann Wachter; human resources generalist Angela Faber; and human resource director Kathy Roberts. Claimant's Exhibit A was received. Employer's Exhibits One through Seven were received. The administrative law judge took official notice of the administrative record, including fact-finding documents.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a part-time physical therapist from May 13, 2013 through September 24, 2014. On September 10 he started seeing a Medicare patient (RC) and completed an Evaluation Summary and Plan (Claimant's Exhibit A, pp. 1, 2). He saw the patient for physical therapy sessions again on September 12, 15, and 17, 2014 (Claimant's Exhibit A, p. 3). On September 15 staff administrative assistant Michele VanOstrand reported to Wachter that she observed RC present for an appointment that day for 45 minutes but did not see claimant work with him yet billed 27 minutes or two units of therapeutic exercise (Employer's Exhibit Four). Physical therapist Anne Kruse reported to Wachter on the same day that she observed claimant greet RC and left the gym. RC performed numerous exercises without supervision from claimant. She then saw claimant enter the gym and tell RC he was going to lunch and left. RC continued exercising unsupervised (Employer's Exhibit Three). On September 17 when RC was scheduled for his next appointment with claimant, Wachter asked VanOstrand to let her know when RC arrived. Wachter saw VanOstrand walk RC into the gym and ask claimant if he wanted to see RC in the gym or in a private room. Claimant chose the gym. Claimant did not go to RC at that time and RC started exercising on his own. Claimant did not see RC in a curtained room while he was there that day. Wachter was with a patient in the gym and watched claimant spend four minutes speaking to RC while he was

seated on a weight machine and observed claimant spend another minute helping RC adjust the exercise bike. She observed no therapeutic one-on-one time before RC left. Wachter checked and found that claimant billed for two units of therapeutic exercise (23 to 27 minutes), including time in the gym. Gym time and unsupervised exercise bike time is not to be billed. Wachter and director Bobbi Schell met with claimant on September 22 and asked him if he understood the eight-minute billing rule. He said that he did but gave no clear answer why he billed two units other than he thought he spent more time with RC than four minutes. He said he understood the seriousness of the situation and that he knew violation would constitute fraudulent billing. Schell asked him if he billed other patients the same way. He provided information for one other patient that he billed inappropriately for two units when not providing sufficient services for one billing unit.

Claimant noted at hearing that he disagreed with another supervisor's billing practices for unsupervised patient time on exercise equipment. Wachter had told claimant and other physical therapists to write in patient notes indicating why "skilled intervention is required by the therapist." Employees are provided with guidance on how to bill physical therapy services, specifically that the billed service must include "skilled therapeutic one-on-one intervention (Employer's Exhibit Seven, p. 6). The employer's policy regarding patient and time records warns that misrepresentation of facts or intentional falsification is cause for immediate dismissal. The policy is provided on the employer's intranet and employees are given training on how to access the policy at orientation (Employer's Exhibit Six, p. 2). Physical therapists also are expected to follow a code of ethics regarding appropriate charges for services (Employer's Exhibit Five, p. 2) They also receive related training while in school. Claimant believes his separation was for pretextual reasons that Wachter was not happy that his methods and style differed from hers. She told him at hire he could use his independent judgment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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.
>
> This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.,* 275 N.W.2d 445, 448 (Iowa 1979).

The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

Workers in the medical services field reasonably have a higher standard of care required in the performance of their job duties to ensure public safety and health and appropriate billing. That duty is evident by special training and licensing requirements. Wachter's observation of claimant's time spent, or lack thereof, is credible. Claimant's repeated inaccurate billing noted shortly before the time of separation, which jeopardized the employer's Medicare treatment authority, is evidence of, if not deliberate conduct, negligence or carelessness to such a degree of recurrence as to rise to the level of disqualifying job-related misconduct, even without prior specific warning. See Iowa Admin. Code r. 871-24.32(1)a. Benefits are denied.

DECISION:

The October 10, 2014 (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

_____
Dévon M. Lewis
Administrative Law Judge

_____
Decision Dated and Mailed

dml/can