

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROGER A CARRIER
Claimant

APPEAL NO. 10A-UI-05852-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABCM CORPORATION
Employer

**OC: 03/21/10
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated April 12, 2010, reference 01, which denied benefits based upon his separation from ABCM Corporation. After due notice, a telephone hearing was held on June 9, 2010. The claimant participated personally. The employer participated by Ms. Janette Simon, Administrator, and Ms. Lisa Thein, Human Resource Manager.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Roger Carrier was employed as a full-time certified nursing assistant for the captioned nursing facility from December 6, 2007 until March 27, 2010 when he was discharged for failure to follow instructions in the performance of his duties.

Under company policy employees are subject to discharge if they receive repeated warnings for failure to perform their duties or obligations properly. Mr. Carrier was aware of the company's policies and rules.

On January 27, 2010, the claimant was warned for failing to follow transfer policies that required two employees to use a mechanical lift to transfer a patient. Although aware of the requirement that two employees be involved in the transfer, Mr. Carrier did not follow the policy placing the employer and the resident at risk. Mr. Carrier received a second warning that day for failing to notify the nursing staff of bruising that occurred on the resident because of the failure to follow lifting requirements.

On March 18, 2010, the claimant was warned for failure to follow company procedures when he did not obtain authorization to work overtime hours. The final incident that resulted in the

claimant's termination took place when Mr. Carrier did not follow instructions about the care of a female resident. The instructions specified that the resident not be assisted by male care givers. Although other staff was generally available, Mr. Carrier attempted to provide care to the resident causing the resident to become upset. On March 23, the claimant had also received a warning when the employer believed that the claimant had not provided proper care when a resident received a skin tear because Mr. Carrier was upset and working too quickly. Based upon the totality of the infractions and the number of warnings served upon Mr. Carrier, a decision was made to terminate the claimant from employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes that the claimant was discharged under disqualifying conditions.

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 evidence in the record establishes that the claimant had received numerous warnings from his employer for failing to follow reasonable and known instructions regarding patient care as well as unauthorized overtime. Although Mr. Carrier was aware of the rules, he repeatedly substituted his own judgment in place of the rules set forth by the employer. When the claimant's conduct continued after numerous warnings, he was terminated from employment.

The claimant's repeated failure to follow reasonable and known work rules showed a disregard for the employer's reasonable interest and standards of behavior that the employer had a right to expect of its employees under the provisions of the Iowa Employment Security Act. Benefits are withheld.

DECISION:

The representative's decision dated April 12, 2010, reference 01, is affirmed. Claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided that he is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs