

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

JACKIE J TVEDT
203 S MAIN
MONTOUR IA 50173

NEWTON CARE LLC
HERITAGE MANOR
1743 S 8TH AVE E
NEWTON IA 50208

Appeal Number: 04A-UI-02918-DWT
OC 02/15/04 R 02
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 are 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:

Jackie J. Tvedt (claimant) appealed a representative's March 16, 2004 decision (reference 05) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Newton Care LLC, doing business as Heritage Manor (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 April 8, 2004. The claimant participated in the hearing. Tim Perry, the administrator, appeared on the employer's behalf. 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 claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits, or did the employer discharge her for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on September 29, 2003. The claimant worked as a full-time licensed practical nurse. Her supervisor was the director of nursing.

During the claimant's employment, the employer gave her written warnings. On December 18, 2003, the employer gave the claimant a written warning. The employer told the claimant her job was in jeopardy if she continued to fail to do her job that was not in accordance with standard nursing procedures. In mid-December, the claimant indicated she could do her job better because she had had a lot on her mind.

On January 5, 2003, the director of nursing learned the claimant did not follow standard nursing procedures by following up on a resident who complained of chest pains on January 4. The employer also concluded the blood pressure reading for this resident had been unusually high. After the resident complained of chest pains, the claimant assessed her and determined the resident had indigestion so there was no need for alarm. The claimant did not contact the resident's physician, which was the standard procedure in incidents of this nature. The director of nursing talked to the claimant about this incident on January 5.

On January 9, 2004, the employer gave the claimant her final written warning for failing to properly document medications. The employer told the claimant that if she had any more problems, she would be discharged.

After the claimant received her final written warning, the employer learned the claimant recorded a high blood sugar reading for a diabetic resident and failed to contact the resident's physician or do a timely follow up. When the claimant had obtained the blood sugar reading for this resident, she read the orders for the resident. Although the claimant found the orders confusing, she did not contact anyone. The claimant did not have the resident's blood sugar level checked for about ten hours. When the resident's blood sugar level was again checked, it was within a normal range for the resident.

On January 13, 2004, Perry and the director of nursing talked to the claimant about the standard of care she had given to the diabetic resident and the resident who had complained about chest pains. The employer had also recently received complaints from residents about the claimant waking them up at night so she could talk to them about religion. During the January 13, 2004 meeting, the claimant told the employer she had not done some follow up on the residents in questions because God told her when the residents were healed. Since the residents were healed there was no need to notify a doctor. The claimant believes in and practices holistic healing.

On January 15, 2004, the employer told the claimant she could either quit or the employer would discharge her. The employer made the decision to end the claimant's employment because she repeatedly failed to follow the standard of care a licensed nurse was required to follow when caring for residents and she repeatedly failed to follow the employer's procedures. When given the opportunity to resign, the claimant indicated she would resign. Even though the claimant never told the employer or went to her doctor, she experienced lower back pain,

which she attributed to the work she performed for the employer. The claimant's employment ended on January 15, 2004.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§96.5-1, 2-a. The facts establish the employer initiated the employment separation. When an employer tells a claimant they can either quit or be discharged, a claimant has not voluntarily quit her employment. Instead, the employer has discharged the employee.

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 her job was in jeopardy after the employer gave her warnings on December 18, 2003 and January 9, 2004, which specifically warned the claimant she would be discharged if she failed to follow the standard procedures a licensed nurse is required to follow when caring for residents. The evidence establishes the claimant on more than one occasion failed to follow the standard of care a nurse is required to follow and failed to follow the employer's rules and procedures. The employer discharged the claimant for reasons constituting work-connected misconduct. As of February 15, 2004, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's March 16, 2004 decision (reference 05) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of February 15, 2004. 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/kjf