

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DOROTHY HUFF
Claimant

APPEAL NO. 07A-UI-06651-E

**ADMINISTRATIVE LAW JUDGE
DECISION**

PERRY HEALTH CARE CENTER
Employer

**OC: 06-10-07 R: 02
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 26, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held in Des Moines, Iowa, before Administrative Law Judge Julie Elder on July 26, 2007. The claimant participated in the hearing with Attorney Randy Schueller. Darla Trenary, Director of Nursing, participated in the hearing on behalf of the employer with Attorney Mary Funk. Employer's Exhibits One and Two were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time night shift charge nurse for Perry Health Care Center from October 31, 2006 to February 16, 2007. On February 9, 2007, a resident died while the claimant was acting as charge nurse, and the employer and DIA commenced an investigation when DON Darla Trenary returned from vacation February 13, 2007. The claimant spoke to Ms. Trenary on the phone February 13, 2007, and was instructed to come in and provide a written statement to the employer as soon as possible. The claimant stated she could not work that night because she had not had any sleep; and although she was not scheduled to work again until February 16, 2007, she was suspended pending provision of the written statement (Employer's Exhibit One). Ms. Trenary asked the claimant when she would be in; and after the claimant had a conversation with someone in the background, the line went dead. Shortly after that phone call, employee Linda Hein received a phone call from the claimant saying she would be in after her daughter finished typing her statement. Around 4:00 p.m., the claimant's daughter called Ms. Trenary and said she was bringing in her mother's statement but her mother would not be in and Ms. Trenary told her that the claimant had to bring in the statement so the employer could verify it was her statement and also wanted to discuss the matter with her and her daughter said, "Fine." Around 5:00 p.m., the claimant's daughter called and said she attempted to bring her mother in but the roads were bad so they would be in the following day. Ms. Trenary asked her if she was refusing to come in because of the weather and her daughter

stated she was not refusing to come in but could not because of the weather. Ms. Trenary said she understood but would have to suspend the claimant until the investigation was complete and she needed the claimant's written statement before she could do that. Ms. Trenary tried to call the claimant twice to speak to her personally but did not receive an answer. Approximately five minutes later another staff member notified Ms. Trenary the claimant's daughter was on the phone, but when she picked up the phone the line was dead. The staff member told Ms. Trenary the claimant's daughter told her she would be in the next day to turn in the claimant's resignation. The employer completed the quality assurance investigation February 16, 2007, regarding the resident's death without the claimant's statement and terminated her employment for failure to cooperate with the investigation. The claimant testified she felt the situation was sufficiently discussed on the phone February 13, 2007, and did not understand why she needed to go to the facility or provide a written statement. She did not go in February 13, 2007, because the weather was bad, but did not go in February 14, or 15, 2007, because she "didn't want to." Her daughter told her she would be terminated if she did not take in her written statement and the claimant said, "I don't care." She also testified she was thinking about quitting but "didn't get around to it." She was aware she was required to provide information to DIA when requested.

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 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 employer's request that the claimant complete a written statement about the non-routine death of a resident was not unreasonable, and the claimant's refusal to comply is puzzling. While she may have been depressed about the resident's death, that does not excuse her from providing the written statement, kjw and allowing her nearly four days to do so under the circumstances was a reasonable amount of time. Consequently, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

DECISION:

The June 26, 2007, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw