

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CLAUDETTE CUBBAGE
Claimant

APPEAL NO: 09A-UI-03254-E

**ADMINISTRATIVE LAW JUDGE
DECISION**

GENESIS HEALTH SYSTEM
Employer

OC: 02-08-09
Claimant: Appellant (1)

Iowa Code Section 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated February 17, 2009, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from the employer for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was held in Davenport, Iowa, on April 8, 2009. The claimant participated in the hearing. The employer participated through Craig Fields, Human Resources Director. 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:

The issue is whether the employer discharged the claimant for work-related misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time certified nurse's aide from May 19, 2008 through January 22, 2009 when she was discharged for a repeated failure to follow directives and to provide proper care to the residents. She was first counseled on July 9, 2008, for five incidents of tardiness in her first seven weeks of employment. Later on that same date, the employer issued her a written warning for falling asleep and questioning the nurse's actions regarding care skills. A second written warning was issued to her on November 3, 2008 for failing to complete her job duties. A resident's care plan dictates the level of care which is required for each resident. The plan indicates when a resident is put to bed and the care needed before going to bed. The charge nurse followed up on the claimant's residents and the required care had not been provided. The charge nurse asked the claimant to return to provide the proper care and as the nurse walked away, the claimant raised her middle finger to the nurse's back. A final written warning was issued to the claimant January 5, 2009, for safety violations. A resident's care plan also provides safety restrictions needed for the resident. The claimant received the warning for transferring a resident by herself when the resident's care plan requires two staff members for transfer. The claimant was advised her job was in jeopardy and stated she would be discharged upon any further incidents. On January 16, 2009, she put

a resident to bed with clothing on and without providing the appropriate care for that patient. On January 17, 2009, the charge nurse found the claimant providing care for a resident to whom she was not assigned. The charge nurse directed the claimant back to her residents and the claimant made disparaging remarks to others about the charge nurse. During that same shift, two call lights came on before the claimant went on break but she left anyway without checking on these residents. The charge nurse became aware of the situation after the claimant took an extra long break and directed the claimant to respond to the call lights. The claimant said okay but did not move until the charge nurse prompted her again. The final issue occurring on that same shift was the claimant directing another employee to do her work. The charge nurse discovered what she was doing and allowed the other employee to go home. Following that, the claimant went into a resident's room and started complaining about the charge nurse. Her complaints upset the resident, who asked the claimant not to discuss things like that in front of her and the claimant's employment was terminated.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected 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 has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job

Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for a repeated failure to follow directives and to provide proper care to the residents. Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). The claimant knew what was required of her but failed to carry out her duties even after being warned that her job was in jeopardy. The claimant's conduct shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated February 17, 2009, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until 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/pjs