

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

DIANE K NOVAK
3515 N DIVISION
DAVENPORT IA 52806

CARMELITE SISTERS FOR THE AGED
& INFIRM KAHL HOME FOR AGED
1101 W 9TH ST
DAVENPORT IA 52804

Appeal Number: 04A-UI-01876-LT
OC 01-18-04 R 04
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 is 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/Misconduct

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the February 13, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on March 10, 2004. Claimant did participate. Employer did participate through Jim Fascher.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time LPN through January 15, 2004 when she was discharged. On January 13 the DON had concerns about medication (narcotics hydrocodone and propoxy) counts for control groups on the 4th floor taken on January 9 through 15, 2004. One week prior to January 9 a resident's (Mrs. OL) daughter inquired about her mother's pain medication and

thought she was not receiving all that they were paying for. A review revealed that none was given. On January 9 a shipment was received for medication not warranted for residents. At least 77 units were missing in a month and a half from December 1 through January 15.

Narcotics continued to be missing and as of January 13 counts were taken at the beginning and ending of each shift by the nurse supervisor and DON and recorded. From that, employer was able to determine that all of the missing narcotics were coming from the second shift on 4th floor where claimant was a nurse and the only person with access to the medication cart during the control period.

Employer confronted claimant on January 15. Claimant said she was poor at recording drug administration to residents and did not record PRN medication because of time constraints. She estimated how many narcotics taken by residents in a week. Employer then demonstrated that medications were administered by other nurses on other shifts to residents for which claimant gave no medications. Claimant said she normally ordered the medications because she had the most time. She was also the recipient of the narcotics orders.

Mr. AV medication records from pharmacy 16 hydrocodone on November 6 ordered by claimant. One dispensed on November 15, December 31 by a nurse other than claimant. Claimant then reordered the meds on January 9 saying that she reorders when three are left but she does not record in spite of state regulations requiring narcotics to be recorded. An interview of two lucid residents (Mrs. JK and MAL) revealed that they were not receiving the pain medication in the amounts for which the narcotics orders were placed.

Claimant acknowledged not recording narcotics in spite of knowing state regulations require it. She said she did not have time to record administration of narcotics (time, initial, and effectiveness notation one hour later).

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

Claimant's admitted failure to record administration of narcotics as she was aware is required by state law is misconduct in spite of no prior warnings. She knew what was required of her and deliberately failed to carry out that requirement.

If she did take the narcotics for personal use, as the evidence suggests, this would constitute serious resident abuse for failure to give prescribed pain medication and allowing residents to remain in pain for her personal benefit (not to mention the criminality of theft and use of narcotics without prescription). Benefits are denied.

DECISION:

The February 13, 2004, 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.

dml/kjf