

**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**

**ALLISYN L BOER  
716 OVERMAN AVE  
OTTUMWA IA 52501-3844**

**CARE INITIATIVES  
c/o TALX UC EXPRESS  
PO BOX 6007  
OMAHA NE 68106-6007**

**Appeal Number: 06A-UI-06034-CT  
OC: 05/07/06 R: 03  
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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Allisyn Boer filed an appeal from a representative's decision dated June 5, 2006, reference 01, which denied benefits based on her separation from Care Initiatives. After due notice was issued, a hearing was held by telephone on June 29, 2006. Ms. Boer participated personally and Exhibits A, B, and C were admitted on her behalf. The employer participated by Holly Skinner, LPN; Donetta Ware, Director of Nursing; and Valerie Lybarger, Administrator. The employer was represented by Lynn Corbeil of TALX UC eXpress. Exhibits One through Four were admitted on the employer's behalf.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Boer was employed by Care Initiatives from July 2, 2004 until May 14, 2006 as a full-time LPN. She was last employed in the capacity of charge nurse.

On May 9, 2006, a surveyor from the Iowa Department of Inspections and Appeals (DIA) was in the building. The surveyor noted that Ms. Boer was dispensing insulin from a bottle that did not have a pharmacy label. Ms. Boer indicated that the label had been ordered from the pharmacy the day prior. When she realized it had not been ordered the day before, Ms. Boer did not approach the surveyor to correct her earlier answer. Instead, she falsified the pharmacy sheet so that it would appear the label was ordered on May 8.

Because she had given misinformation to the surveyor, Ms. Boer was suspended effective May 10. She was to return to work on May 14 but did not. She did not return because she noted on May 13 that her name had been taken off the schedule for the remainder of the month. She was waiting for someone to call her regarding her status. If Ms. Boer had returned to work on May 14, she would have been discharged as the decision was made on May 12 to terminate her employment.

#### REASONING AND CONCLUSIONS OF LAW:

The threshold issue in this matter is whether the separation should be characterized as a quit or as a discharge. The employer contended that she quit because she was absent for three consecutive days without notice. Whether Ms. Boer was justified in not reporting to work on May 14 is immaterial. A "voluntary quit" presupposes that, but for the quit, continuing work would have been available. In the case at hand, the employer decided on May 12 that Ms. Boer's employment would be terminated. She would have been notified of the termination when she reported to work on May 14. In essence, Ms. Boer did not have a job to quit on May 14 and, therefore, her failure to appear on that date is immaterial. For the above reasons, the separation is considered a discharge rather than a quit.

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer believed Ms. Boer had given a false statement to a DIA surveyor. She may well have had a good-faith belief that the insulin label had been ordered. If that were the case, her statement to the surveyor was true at the time made. However, Ms. Boer knew within 20 minutes that the label had not been ordered. She did not take any steps to notify the surveyor that her earlier statement was not accurate. Nor did she seek the guidance of either the director of nursing or the administrator.

Ms. Boer deliberately and intentionally made a false entry in the pharmacy log to cover up the fact that she gave false information to the surveyor. Her actions constituted dishonesty, which is contrary to the type of behavior the employer had the right to expect, especially from a charge nurse. For the reasons stated herein, the administrative law judge concludes that substantial misconduct has been established by the evidence. Accordingly, benefits are denied.

DECISION:

The representative's decision dated June 5, 2006, reference 01, is hereby affirmed as to result. Ms. Boer did not quit her employment but was discharged for 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 job insurance benefit amount, provided she satisfies all other conditions of eligibility.

cfc/pjs