

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

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Appeal Number: 04A-UI-08581-H2T
OC: 07-11-04 R: 03
Claimant: Respondent (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:

The employer filed a timely appeal from the July 28, 2004, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on October 13, 2004. The claimant did participate and was represented by Misty White-Reiner, Attorney at Law. The employer did participate through (representative) Fred Metcalf, Human Resources Associate. Employer's Exhibit One was received. Claimant's Exhibit's One through Five are entered and received in the record.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as an LPN full time beginning July 30, 2003 through January 16, 2004

when she was discharged. The claimant was discharged for three events; failing to assess a resident who fell on January 14, 2004, failing to assess a resident who had breathing problems on January 14, 2004, and failing to complete course work that would allow her to work as a supervising LPN.

Claimant's Exhibit Four clearly indicates that the claimant did chart about the resident's breathing problem on the evening of January 15 and her chart note indicates that she had assessed the patient's oxygen level. The claimant did assess and chart the patient with alleged breathing problems on the evening of January 15, 2004.

Claimant's Exhibit Five in conjunction with the claimant's testimony indicates that the resident fell in the morning after the claimant had left for the day. The claimant left work at 6:00 a.m. two hours after the chart indicated that the claimant had fallen. It would have been impossible for the claimant to chart or assess an event that did not occur while she was at work.

The claimant has worked as a supervisory LPN prior to 1982. The employer required that the claimant take a course to make it possible for her to work as supervisory LPN. She was given until January 30, 2004 to complete the course. The claimant took the course because the employer told her that she was required to take the course. The claimant did not successfully complete the course. The claimant had to submit an essay and perform a demonstration for the instructor.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer discharged the claimant and has the burden of proof to show misconduct. Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa App. 1988).

A failure to successfully complete required course work is not evidence of misconduct where there is an attempt in good faith to satisfy the requirements. Holt v. IDJS, 318 N.W.2d 28 (Iowa App. 1982). The claimant was terminated before the time allotted to complete the course work had expired. Additionally, it is clear that since the claimant had worked as a supervisory LPN prior to 1982 she was not required to complete the course work to remain employed as a supervisory LPN. The claimant had made a good faith effort to complete most of the course work, but had not even been given until the end of January 2004 to complete the course. The claimant's failure to complete the course is not evidence of misconduct.

Additionally the claimant's uncontroverted testimony in conjunction with Claimant's Exhibit's Four and Five clearly indicate that she did assess and chart on the patient who had breathing problems and that she was not working when another resident fell.

The employer's evidence does not establish that the claimant deliberately and intentionally acted in a manner she knew to be contrary to the employer's interests or standards. There was no wanton or willful disregard of the employer's standards. In short, substantial misconduct has not been established by the evidence. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The July 28, 2004, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

tkh/kjf