

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CAROL L THYER
Claimant

**PEOPLES MEMORIAL HOSPITAL
BUCHANAN COUNTY HEALTH CENTER**
Employer

APPEAL 15A-UI-04468-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/22/15
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 7, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 12, 2015. Claimant participated. Employer participated through Shelby Medina, Chief Administrative Officer; Tara McEnany, Chief Nursing Officer and was represented by Sarah K. Franklin, Attorney at Law. Employer's Exhibit One was entered and received into the record.

ISSUE:

Was the claimant discharged due to job-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a staff nurse beginning on June 1, 1983 through March 17, 2015 when she was discharged.

On March 13 another nurse charted inaccurately that a patient had used a spirometer post-surgery. Eventually the employer discovered that there was no spirometer in the patient's room. That nurse was disciplined and admitted that no spirometer had been given to the patient. On March 15 the claimant charted that she had observed the same patient using a spirometer in his room on March 15. A respiratory therapist saw the patient on March 16 and discovered from the patient that he had not been given a spirometer at all to use by anyone.

The claimant was confronted by the employer March 17. She changed her story when confronted. The claimant indicated that the patient had used the spirometer and reported the results to her. Her charting did not indicate that. Her charting indicated that she watched the patient perform the test and recorded the results. The claimant did not observe the patient and the patient did not report any results to her. The claimant falsified the patient's medical records.

The claimant had been given prior warnings and coaching for failure to follow the employer's policies and procedures, specifically with regard to medications. The claimant simply was not charting correctly or following the proper procedures for wasting medications.

The claimant knew that accurate charting was necessary and that failure to accurately chart for a patient was conduct that could lead to her discharge.

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 § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. EAB*, 531 N.W.2d 645 (Iowa App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The administrative law judge finds the claimant did falsify the chart of the patient. Such conduct is not in the employer's best

interest and for a nurse is job-connected misconduct. The claimant was not as believable as she could offer no explanation as to why she did not chart that the patient reported the results to her. The claimant had prior warnings about failure to follow procedures. Her actions do constitute substantial job-connected misconduct sufficient to disqualify her from receipt of unemployment insurance benefits. Benefits are denied.

DECISION:

The April 7, 2015 (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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css