

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CANDICE NELSON
Claimant

APPEAL NO: 11A-UI-05491-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

JENNIE EDMUNDSON
MEMORIAL HOSPITAL
Employer

OC: 03-06-11
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 12, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 19, 2011. The claimant participated in the hearing with Jennifer Green, former CNA for the employer. Kathy John, human resources representative, and Mary Jane Colburn, DON, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time certified nurse's assistant for Jennie Edmundson Memorial Hospital from August 25, 2008 to March 9, 2011. She was discharged for her repeated failure to consistently provide basic patient cares. The employer issued the claimant an unrelated verbal warning February 25, 2010 for making fun of a "co-worker's butt." The claimant received a performance evaluation August 12, 2010, in which it was documented that she did not always do back rubs and give the hours of sleep cares. She was advised to complete all patient cares and to carry her share of the workload. The claimant had two peer evaluations, and one peer said she did the bare minimum and the other peer said she had to push the claimant to keep her on her toes. A charge nurse noted October 3, 2010, that the claimant said she was too busy to weigh a patient. The claimant received a written warning October 26, 2010, for failing to provide basic cares and inappropriate recording of patient vital signs. She falsified patient vital signs and times when they were reportedly taken. In that warning, she was counseled about using the internet at work instead of taking care of patients. On December 15, 2009, a patient complained about the claimant not removing soiled sheets. The employer issued the claimant another written warning December 21, 2010, with a zero-day suspension for failing to provide basic daily cares. This was discovered through several audits of the claimant's work which was completed by nurses and the DON. A registered nurse caught the claimant on the internet

December 28, 2009. The claimant was on her cell and surfing the internet instead of doing patient cares. The employer started monitoring her after receiving multiple complaints by patients reporting they did not receive their cares. The claimant initially improved, but slid backwards shortly thereafter. She was discharged March 9, 2011, after additional audits confirmed she was still not providing basic patient cares of back rubs, brushing the patients' teeth and providing the proper Foley catheter care.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job 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 of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for poor work performance when she was capable of performing her duties. It is not sufficient for the employer to show that it was unhappy with the way an employee performed the job. Kelly v. Iowa Department of Job Service, 386 N.W.2d 552 (Iowa App. 1986). The claimant was experienced and could complete all that was expected of her but failed to do so. Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the

employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The April 12, 2011, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw