

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES E ATWATER
Claimant

APPEAL NO. 10A-UI-06801-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KEOKUK AREA HOSPITAL
Employer

OC: 04/04/10
Claimant: Respondent (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Keokuk Area Hospital filed an appeal from a representative's decision dated April 28, 2010, reference 01, which held that no disqualification would be imposed regarding James Atwater's separation from employment. After due notice was issued, a hearing was held by telephone on August 26, 2010. Mr. Atwater participated personally. The employer participated by Linda Daughters, Nurse Manager, Medical/Surgical Unit; Louise Skow, Employment Manager; and Rhonda Schreck, Human Resources Director. Exhibits One through Eight were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Mr. Atwater was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Atwater was employed by Keokuk Area Hospital from July 13, 2009 until April 5, 2010. He worked full time as a registered nurse on the medical/surgical unit. He obtained his degree in May of 2009 and his job with the hospital was his first employment as an RN. During the first four to five months of his employment, he worked directly with a preceptor. He was discharged because he did not meet the employer's standards.

In late October, it was noted that Mr. Atwater was not aware of when he should ask for assistance. It was also noted that he had difficulty with basic nursing skills and organization. The employer met with him on October 22 and told him he needed to develop critical thinking skills in addition to focusing on the tasks to be performed. The employer felt he had a genuine desire to meet expectations. On October 29, Mr. Atwater was advised that his probationary period was being extended to November 3. Some of the problem areas that were identified were his poorly written progress notes, his inability to give in-depth reports to the oncoming shift, and prioritizing patient care.

On December 29, Mr. Atwater was counseled regarding omissions in the care of a patient. He was not fully familiar with the protocol to be followed with a patient being admitted from dialysis. He was educated on the proper procedures. On March 4, it was noted that there were still complaints regarding the quality of the reports Mr. Atwater provided to the oncoming staff. It was felt that he was not providing sufficient information during report. It was also felt that he was not sufficiently familiar with the patients' disease processes to provide the type of critical thinking needed to determine appropriate interventions.

During the latter part of March, there were incidents that caused the employer to have concerns regarding the safety of Mr. Atwater's work. He was not handling medications properly. Some were left in open containers in patient rooms but were signed as having been given. It was also noted that he removed medications from his pocket to administer to patients. It was also noted that he was not always familiar with what surgical procedures had been performed and did not always demonstrate basic nursing knowledge regarding diseases. On March 30, the employer counseled Mr. Atwater regarding the deficiencies that had been noted during the month. Based on the continuing problems with his performance and the concerns regarding the safety of his practice, Mr. Atwater was discharged on April 5, 2010. He had not been told at any point that he was in danger of losing his job.

REASONING AND CONCLUSIONS OF LAW:

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). Although the employer's evidence established that Mr. Atwater was an unsatisfactory employee, it failed to establish that he deliberately and intentionally acted in a manner he knew to be contrary to the employer's interests. The administrative law judge is satisfied that his failures were the product of inexperience rather than an intentional disregard of the employer's standards. He had only been out of nursing school approximately two months when he accepted the employment. The fact that other new nurses may have been able to function at an acceptable level does not mean that Mr. Atwater was not putting forth his best efforts.

Mr. Atwater did demonstrate some improvement in his performance during the course of the employment. The employer felt his desire to meet its expectations was genuine. Inasmuch as the evidence failed to establish a wanton or willful disregard of the employer's standards or interests, no disqualification is imposed. The substantial misconduct necessary for a disqualification has not been established. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Although the employer may have had good cause to discharge Mr. Atwater, conduct that might warrant a discharge will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). Benefits are allowed.

DECISION:

The representative's decision dated April 28, 2010, reference 01, is hereby affirmed. Mr. Atwater was discharged by Keokuk Area Hospital but misconduct has not been established. Benefits are allowed, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs