

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

MARILYN K REED
PO BOX 93
LINDEN IA 50146

CARE INITIATIVES
% TALX UC EXPRESS
PO BOX 6007
OMAHA NE 68106-6007

Appeal Number: 05A-UI-05802-CT
OC: 05/08/05 R: 02
Claimant: Respondent (2)

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 for Misconduct

STATEMENT OF THE CASE:

Care Initiatives filed an appeal from a representative's decision dated May 24, 2005, reference 01, which held that no disqualification would be imposed regarding Marilyn Reed's separation from employment. After due notice was issued, a hearing was held by telephone on June 20, 2005. Ms. Reed participated personally. The employer participated by Cassandra Johnson, Administrator, and Lazetta Love, Supervising LPN. The employer was presented by Lynn Corbeil, Attorney at Law, with Talx UC Express. Exhibits One through Six were admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Reed was employed by Care Initiatives, doing business locally as Panora Nursing and Rehabilitation, from March 10, 1997 until March 27, 2005. She was a full-time LPN. She was discharged for failing to provide necessary care and for falsifying documentation regarding the care.

When a resident has a wound, their doctor will provide orders as to how frequently the wound dressing has to be changed. The staff person changing the dressing is required to place the date of the change on the dressing so others will know when the dressing was last changed. The fact of the change is to be noted on the resident's chart along with the initials of the person who changed the dressing. On or about March 24, 2005, the employer learned that Ms. Reed had not changed dressings on three residents as ordered by the doctor. It was also discovered that she had initialed the residents' charts indicating that the dressings had, in fact, been changed.

One resident, Jimmy, was to have his dressing changed daily but it was not changed on March 19 and 20. His chart, initialed by Ms. Reed, indicated that they had been changed on both days. The date on his dressing indicated it had last been changed on March 17. Ms. Reed was aware that Jimmy required daily changes as she had changed his dressing on March 14. Another resident, Mildred, was also to have her dressing changed daily. Although it was not done on March 19 and 20, Ms. Reed initialed her chart to indicate that the dressing or bandage had been changed. The third resident, Willis, was to have daily dressing changes. His last change was on March 18 but Ms. Reed initialed that she had changed the dressing on March 19. She was aware that Willis required daily changes as she had changed his dressing on March 14. The failure to change the dressings as directed by the doctor could have resulted in infections for the residents. It could also have resulted in sanctions against the employer.

Ms. Reed had received a verbal warning on June 14, 2004 for failing to administer medications to seven residents. She was given a written warning on July 8, 2004 for not administering medications, failing to perform a blood pressure check, and for failing to check a resident's pulse oxygen.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Reed was separated from employment for any disqualifying reason. 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 decision to discharge Ms. Reed was based on the fact that she failed to change wound dressings and falsely indicated that she had. Another staff person reviewing the chart would believe that the dressings had been changed as ordered and, more likely than not, would not double-check to make sure they had been changed. In the three cases identified by the employer, the residents had the same dressings on for two to three days.

The failure to change dressings had the potential of adversely impacting the residents' health as it could have resulted in infections and possibly gangrene. Such conduct also had the potential of negatively effecting the employer's license to operate as a care facility. Ms. Reed's failure to change the dressings and her falsification of records concerning the changes

constituted a substantial disregard of the employer's interests and standards. As such, it is concluded that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied. No overpayment results from this reversal of the prior allowance as Ms. Reed had not been paid benefits on her claim filed effective May 8, 2005.

DECISION:

The representative's decision dated May 24, 2005, reference 01, is hereby reversed. Ms. Reed was discharged for misconduct in connection with her employment. 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/tjc