

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TARA M BACON
Claimant

APPEAL NO. 13A-UI-03448-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**HUMBOLDT COUNTY MEMORIAL
HOSPITAL**
Employer

OC: 02/17/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Tara Bacon (claimant) appealed a representative's March 14, 2013 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Humboldt County Memorial Hospital (employer) for conduct not in the best interest of the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 24, 2013. The claimant participated personally. The employer participated by Kathy Bagwell, Director of Nursing for Long Term Care.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on February 15, 2011 as a full-time certified nursing assistant. The claimant signed for receipt of the employer's handbook. The employer did not issue the claimant any warnings during her employment.

On February 17, 2013, the claimant was assisting a resident with eating and sitting at a table. The resident pushed the wheelchair away from the table and the claimant pulled the wheelchair back. In the action of pulling the wheelchair back, the resident's left foot was caught under the table leg. The resident cried out and the claimant said that the resident was fine. The resident pushed back and freed the resident's left foot. The claimant then moved to another table to assist another resident. The claimant did not examine the resident's foot or report the incident to the nurse.

Another employee reported the incident to the employer and the resident was examined. The left foot had a bruised area that was eight centimeters by eight centimeters. An x-ray revealed no broken bones. This resident bruised easily.

The employer questioned the claimant on February 19, 2013, and the claimant wrote a statement about the incident. The claimant knew she should have examined the foot and reported the situation to the nurse. On February 21, 2013, the employer terminated the claimant for failure to examine the resident's foot and notify the nurse of the accidental injury on February 17, 2013.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for 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 proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions. The claimant did not follow the employer's instructions when she moved away from the resident, when she did not examine the resident's foot, and when she did not notify the nurse. The claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's March 14, 2013 decision (reference 01) is affirmed. The employer has met its proof to establish job-related misconduct. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css