

**BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building  
Fourth floor  
Des Moines, Iowa 50319**

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**RHONDA S HAGGE**

Claimant,

and

**COLONIAL MANOR OF MANILLA INC**

Employer.

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**HEARING NUMBER: 11B-UI-00835**

**EMPLOYMENT APPEAL BOARD  
DECISION**

**NOTICE**

**THIS DECISION BECOMES FINAL** unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

**SECTION: 96.5-2-A**

**DECISION**

**UNEMPLOYMENT BENEFITS ARE DENIED**

The Employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, finds it cannot affirm the administrative law judge's decision. The majority of the Employment Appeal Board **REVERSES** as set forth below.

**FINDINGS OF FACT:**

Rhonda Hagge (Claimant) was employed as a full-time Registered Nurse/Charge Nurse by Colonial Manor (Employer) from October 2009 until she was fired on December 13, 2010. (Tran at p. 3; p. 9).

The final incident that triggered the discharge occurred within a week prior to the discharge. (Tran at p. 9; p. 11). In this incident a nursing home resident came to the Claimant at the end of the Claimant's shift and requested assistance with some wound care. (Tran at p. 4). The resident had a history of diabetes-related skin problems. (Tran at p. 14). The resident had a two cm long skin tear on her leg. (Tran at p. 11). On the skin tear were several steri-strips to hold the torn skin in place. (Tran at p. 11). The resident was about to leave for a dialysis treatment. (Tran at p. 11-12). The Claimant concluded the resident's wound looked in good shape. (Tran at p. 11-12; p. 14). The Claimant put some antibiotic ointment on the wound. (Tran at p. 11). The Claimant put some gauze over the wound. (Tran at p. 11;

p. 14). The Claimant then replaced the

Coban self-adhering wrap around the resident's leg to hold the gauze in place. (Tran at p. 11; p. 15). The Claimant gave ointment and gauze to the resident to take to the appointment. (Tran at p. 11). The Claimant did not chart anything regarding the care she provided to the resident. (Tran at p. 5; p. 13). The Claimant did not review any charting to see what wound care had most recently been provided to the resident. (Tran at p. 13-14). The Claimant did not look to see if there was a physician's order authorizing the antibiotic ointment or the gauze. (Tran at p. 17-18). The Claimant did not make contact with a physician or the resident's family. (Tran at p. 5). Under protocol at the Employer a wound of the size at issue requires a skin sheet, notice to a physician, and notice to the family. (Tran at p. 6; p. 11). The Claimant had been previously written up for a medication error caused by her not following standard procedure for medication administration. (Tran at p. 7-8 ["five rights"]).

But for the Claimant's behavior in the final incident the Employer would not have discharged her.

#### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code Section 96.5(2)(a) (2011) provides:

*Discharge for Misconduct.* If the department finds the individual has been discharged for misconduct in connection with the individual's employment:

The individual shall be disqualified for benefits until the individual has worked in and been paid wages for the insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The Division of Job Service defines misconduct at 871 IAC 24.32(1)(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 the 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 is the meaning which has been given the term in other jurisdictions under similar statutes, and we believe it accurately reflects the intent of the legislature." *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d, 445, 448 (Iowa 1979).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 NW2d 661 (Iowa 2000).

We do not view the final incident as negligence or merely an exercise of poor judgment. A charge nurse knows to review charting before administering care, and knows absolutely to chart all cares. The fundamental process of assessment – which must precede nursing interventions - cannot even commence if data is not recorded and reviewed. Just as fundamentally a nurse should not be administering treatments or medications without appropriate authorization. The Claimant made the conscious decision to ignore these basic principles of her profession. It is understandable that the Claimant might feel tempted to skip mandated steps because she was short on time. It is, however, not excusable that she gave into this temptation and made the conscious decision to let necessary steps, essential to patient care, slide. This is not an isolated act of negligence or misjudgment, but a deliberate violation or disregard of standards of behavior which the employer has the right to expect of its nurses. We deny benefits based on misconduct.

**DECISION:**

The administrative law judge's decision dated February 24, 2011 is **REVERSED**. The Employment Appeal Board concludes that the claimant was discharged for disqualifying misconduct. Accordingly, she is denied benefits until such time the Claimant has worked in and has been paid wages for insured work equal to ten times the Claimant's weekly benefit amount, provided the Claimant is otherwise eligible. See, Iowa Code section 96.5(2)"a".

The Board remands this matter to the Iowa Workforce Development Center, Claims Section, for a calculation of the overpayment amount based on this decision.

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Monique F. Kuester

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Elizabeth L. Seiser

**DISSENTING OPINION OF JOHN A. PENO:**

I respectfully dissent from the majority decision of the Employment Appeal Board; I would affirm the decision of the administrative law judge in its entirety.

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John A. Peno

A portion of the Employer's appeal to the Employment Appeal Board consisted of additional evidence which was not contained in the administrative file and which was not submitted to the administrative law judge. While the appeal and additional evidence (records) were reviewed, the Employment Appeal Board, in its discretion, finds that the admission of the additional evidence is not warranted in reaching today's decision.

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John A. Peno

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Monique F. Kuester

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Elizabeth L. Seiser

RRA/fnv