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

Appeal Number: 06A-UI-05423-C
OC: 04/23/06 R: 03
Claimant: Respondent (1)

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.

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____
(Administrative Law Judge)

____
(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Tama Health Care Enterprises filed an appeal from a representative's decision dated May 12, 2006, reference 01, which held that no disqualification would be imposed regarding Bobbie Coster's separation from employment. After due notice was issued, a hearing was held on June 14, 2006 in Ottumwa, Iowa. Ms. Coster participated personally and was represented by Kathryn Walker, Attorney at Law. Exhibits A through E were admitted on Ms. Coster's behalf. The employer participated by Deb Koedam, Corporate Manager, and was represented by Douglas Fulton, Attorney at Law. Exhibits One through Eight were admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Coster was employed by Tama Health Care Enterprises, doing business as Sunny Hill Care Center, from October of 2004 until April 25, 2006. She was hired as a full-time licensed administrator and remained so at the time of separation. She was discharged from the employment.

One of the reasons for Ms. Coster's discharge was the failure to be aware that a resident had run out of Medicare days. There is a limit as to the number of days Medicare can be billed for care for a resident each year. After the specified number of days have elapsed, the resident has to be switched to either Medicaid or a private insurance carrier. At the time of a resident's admission to Sunny Hill, a check is conducted to determine if any Medicare days have been utilized at a different facility or hospital. If so, those days are deducted from the annual allotment. There is a "common working file" maintained by Medicare in which information concerning all Medicare days at all facilities is to be maintained.

In January of 2006, it was determined that a resident by the name of Dorothy had only 27 Medicare days remaining as of December 31, 2005. Marcie Richie, the employer's billing coordinator, checked with Medicare on or about February 15, 2006 and was made aware of 23 days Dorothy had used for Medicare coverage while in the hospital. During a second call to Medicare, Ms. Richie was made aware of an additional 59 days Dorothy had spent in other skilled care facilities. When combined with the time Dorothy had spent in Sunny Hill, she exhausted her 100 available days on December 31, 2005. Because Dorothy had not been changed to a different payment source effective January 1, 2006, the employer lost revenue. On March 1, 2006, Ms. Coster was given a written warning citing a failure to work with the billing coordinator.

On February 17, 2006, a survey was conducted by the Iowa Department of Inspections and Appeals (DIA). On March 2, the employer was provided a written report that included a listing of deficiencies noted during the visit. The employer was required to submit a written plan by March 17 to indicate how the deficiencies would be cured and within what time frame. Ms. Coster met with the heads of the various departments to address how the deficiencies would be dealt with. She submitted a plan of correction to DIA on March 16, 2006. The facility was again visited by DIA on April 4. It was determined that two deficiencies from the earlier visit had not been corrected. Ms. Coster had indicated that cracked tile in a threshold would be repaired by March 24. She and the maintenance person had difficulty locating the appropriate tile to use but no extension of time was requested in which to make the necessary repairs. The re-visit on April 4 also revealed that care plans were not being adhered to. The corporate manager, Deb Koedam, was the acting director of nursing at Ms. Coster's facility from November of 2005 until April of 2006.

In addition to finding that two previous deficiencies had not been corrected, the April 4 visit from DIA revealed an additional deficiency. The oxygen tanks were not maintained in an upright position behind chains. In a letter dated April 20, the employer was advised that payment for new Medicare and Medicaid admissions would be denied as of May 5, 2006. The employer was given the opportunity to establish substantial compliance with the monitoring report. The employer did not actually lose its license to do business or the ability to admit Medicare and Medicaid recipients.

In making the decision to discharge, the employer also considered the fact that Ms. Coster failed to place an ad for a director of nursing as directed by the corporate manager. She did not do so because she did not feel funds were available. Because of the failure, Ms. Coster received a written warning on January 18, 2006.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Coster 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). For reasons that follow, the administrative law judge concludes that the employer has failed to satisfy its burden of proof. Although there was a resident who was not switched over from Medicare on a timely basis, the administrative law judge is not satisfied that the incident was Ms. Coster's fault. It appears that current, up-do-date information is not always available in the "common working file" maintained by Medicare. Ms. Richie placed two calls to Medicare on February 15, 2006. During her first call, she was given information regarding the resident's hospital stays. During the second call, she was given information regarding the resident's stays in other skilled facilities. If all of the information was in the system during the first call, one would have to wonder why it took a second call to obtain all of the pertinent information. The administrative law judge is not satisfied that Judy was relaying information from Ms. Richie to Ms. Coster regarding the resident's Medicare status.

Ms. Coster did fail to run an ad for a director of nursing as directed in January of 2006. However, she had a good-faith belief that there was no money available to run the ad. At most, she used poor judgment in not re-visiting the issue with the corporate manager once she determined that the ad was not going to be run as directed. Isolated instances of poor judgment do not constitute acts of misconduct. See 871 IAC 24.32(1).

The decision to discharge Ms. Coster was prompted by the survey conducted by DIA. As the administrator, she had the ultimate responsibility for problems in the facility. She made a good-faith effort to resolve all of the deficiencies noted on the March 2 report. Steps had been taken in an effort to replace the cracked tile but Ms. Coster was unable to locate the appropriate tile to use. Although she should have sought additional time in which to cure the deficiency regarding the cracked tile, she was also dealing with trying to cure the other deficiencies noted by DIA. One of the deficiencies that was not cured dealt with nursing staff's failure to follow care plans. It was unreasonable to expect that Ms. Coster, as administrator, would be fully conversant with the care plans of all residents in the facility. It was also unreasonable to expect that she would review residents' charts on a daily basis to make sure care plans were being followed. Ms. Coster relied on the nursing staff to make sure that the care plans were being followed.

It is noteworthy that the individual who was acting director of nursing at the time of the deficiencies in February was also Ms. Coster's corporate manager. The acting director of nursing did not make Ms. Coster aware that there were problems with nursing staff not following the care plans. If the director or nursing, the individual with the ultimate authority over nursing care, was not aware of the problem, the administrative law judge is not inclined to believe Ms. Coster was aware of it. Ms. Coster met with the nursing staff after the March 2 report from DIA and explained the areas of deficiency. Inasmuch as Ms. Coster took reasonable steps to correct the problem as identified by DIA, it is concluded that the nursing

staff's continuing failure to follow care plans was not misconduct on her part. The fact that oxygen tanks were not properly secured was not misconduct on Ms. Coster's part. Even if she did daily walk-throughs of the facility, there is no guarantee she would find all of the problems that could occur over the course of a day. A problem that was not noted on the walk-through might occur after the walk-through.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that the employer has failed to establish disqualifying misconduct. While the employer may have had good cause to discharge Ms. Coster, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). The fact that she was the ultimate responsibility at the facility is not sufficient, in and of itself, to establish misconduct. Ms. Coster made good-faith efforts to correct problems as they came to her attention. It was impossible for her to be at all places at all times. Because she was at all times working to the best of her abilities, the administrative law judge concludes that there was no misconduct in connection with the separation. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated May 12, 2006, reference 01, is hereby affirmed. Ms. Coster was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/pjs