

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LARRY L LAWRENCE
Claimant

APPEAL NO. 10A-UI-05810-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 02/28/10
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated April 12, 2010, reference 01, which denied benefits based upon his separation from Care Initiatives. After due notice, a telephone conference hearing was scheduled for and held on June 4, 2010. The claimant participated personally. The employer participated by Ms. Lynn Corbeil, Attorney, witnesses, Lori Harvey, Administrator and Ms. Tracy Menard, Second Shift CNA. Employer's Exhibits One through Thirteen were received into evidence.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered the evidence in the record, finds: Larry Lawrence was employed as a full-time nursing assistant for Care Initiatives, doing business as Bedford Care and Rehabilitation from December 2, 2008 until March 3, 2010 when he was discharged from employment.

The claimant was discharged for failing to activate a mat alarm in a patient's room as required by policy and the claimant's nursing notes. Mr. Lawrence was aware that the mat alarm was to be activated but failed to do so. The alarm is designed to alert nursing personnel if a resident who might be injured by a fall, is moving in their room. Because the alarm was not activated the resident subsequently fell and staff had not immediately become aware of the resident's movement and subsequent fall.

The employer terminated Mr. Lawrence for the most recent incident because the claimant had been previously specifically warned for a similar incident in which he had failed to ensure that a bed rail was properly in place. Mr. Lawrence was aware that his employment was in jeopardy if he continued to fail to adhere to job requirements.

REASONING AND CONCLUSIONS OF LAW:

For the reasons stated herein the administrative law judge concludes that the employer has sustained its burden of proof in showing disqualifying job 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 evidence in the record establishes that Mr. Lawrence had been trained on the safety alarm procedures and had demonstrated the ability to adequately perform the duties required to activate and use the alarm systems. The claimant was also aware that the resident in question was at risk of falling and that the resident's nursing notes required that a mat alarm be used. The claimant had previously been warned for a similar incident and was aware that his employment was in jeopardy.

Although the administrative law judge is convinced that Mr. Lawrence did not intentionally fail to activate the alarm, the administrative law judge concludes that the claimant's negligence or carelessness was of such a recurrence or degree so as to manifest equal culpability under the provisions of the Employment Security Law. Benefits are withheld.

DECISION:

The representative's decision dated April 12, 2010, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in

and been paid wages for insured work equal to ten times his weekly benefit amount, providing that he is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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