

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

JULIE A UNDERWOOD  
127 GROVE ST  
LODI OH 44254-1211

COMMUNITY CARE INC  
108 E INDUSTRIAL ST  
DEWITT IA 52742

Appeal Number: 06A-UI-01263-HT  
OC: 01/01/06 R: 04  
Claimant: Appellant (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, 4<sup>th</sup> 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)

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(Decision Dated & Mailed)

Section 96.5(2)a - Discharge

STATEMENT OF THE CASE:

The claimant, Julie Underwood, filed an appeal from a decision dated January 20, 2006, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on February 20, 2006. The claimant participated on her own behalf. The employer, Community Care, participated by Human Resources Director Carol Wells, Associate Director Leann Moskowitz, and RCF/PMI Director Sarah Scharff. Exhibits One and Two were admitted into the record.

## FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Julie Underwood was employed by Community Care from October 25, 2002 until January 3, 2006. At the time of separation she was the full-time residential care facility service coordinator.

Throughout the course of her employment the claimant received a number of disciplinary actions for failing to perform all of her required job duties in a correct and timely manner. The majority of the problems appeared to be in regard to not having the required documentation filled out and/or submitted properly on the residents.

The final disciplinary action was issued on October 7, 2005, and it outlined 12 separate areas in which the claimant needed to improve, maintain and keep up to date. The warning further stated her job would be in jeopardy if she failed to comply.

Ms. Underwood was on vacation from December 22, 2005 until January 3, 2006. During her absence, on December 28, 2005, RCF/PMI Director Sarah Scharff was informed by the accounting department certain documents had not been submitted for a resident to get medical care. Ms. Scharff entered the claimant's office to look for the documents and while there discovered a number of documents on the desk. These included a stack of unopened letters addressed to residents with postmarks going back to July 2005. There was also correspondence addressed to Community Care and/or Ms. Underwood from various agencies and businesses which she had not opened. Further, some documents and forms were not completed and submitted to the courts as required. Several staff evaluations and disciplinary actions had also not been completed.

Ms. Scharff consulted with Associate Director Leann Moskowitz later that same day. A review of the situation, along with past disciplinary actions was done and the decision was made to discharge the claimant. She was notified of the discharge by Ms. Scharff when she returned from vacation on January 3, 2006.

## REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant had been advised her job was in jeopardy as a result of her ongoing failure to perform her job duties in a timely and effective manner. She maintains she knew nothing about the letters to the residents which were sitting on her desk and that they must have been put there after she left for vacation, but no one had a key to her office other than herself and Ms. Scharff. She could not provide an explanation for untimely evaluations and disciplinary actions or the failure to submit documents to the court. The failure to give the residents their mail is considered a violation of the code of patients' rights. Failure to submit required documents to the court could have resulted in contempt charges against the employer.

The claimant knew full well what the employer expected of her as these were set out very specifically in all of the disciplinary actions given to her over the years. It appears Ms. Underwood simply could not manage her time or her workload, and the employer felt she "socialized" too much rather than doing her work. She had been admonished about this verbally and in writing. Her failure to comply with her work duties and complete her work in a timely manner is conduct entirely within her control and endangered the employer's business and legal relations, as well as its reputation. This is conduct not in the best interests of the employer and the claimant is disqualified.

#### DECISION:

The representative's decision of January 20, 2006, reference 01, is affirmed. Julie Underwood is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount provided she is otherwise eligible.

bgh/s