

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

Claimant	APPEAL NO. 14A-UI-07784-B2T
Employer	ADMINISTRATIVE LAW JUDGE DECISION
	OC: 07/06/14 Claimant: Appellant (1)

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated July 22, 2014, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice and multiple continuances, a hearing was scheduled for and held on October 3, 2014. Claimant participated personally and was represented by an attorney. Employer participated with witnesses. Employer's Exhibits 2-7, 10, 11, 13, 20-23, 29, 30, 32, 33, 35, 37, 39 41, 43, 44, were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on May 30, 2014. Employer discharged claimant on July 2, 2014 because of failure to follow treatment plans and substantial neglect of patients.

Claimant had received previous warnings for neglect of clients. Included in the warnings was a one-day suspension for neglect. In this matter, claimant was supposed to be providing one-to-one supervision of a client. Claimant was found to be using a cell phone during this time.

There are two instant matters which led to claimant's termination. The first incident occurred on April 16, 2014 and involved a resident which claimant had been monitoring. Said resident had fallen back in his seat while eating. (This incident was not written up). Subsequent to the resident's fall, claimant, who was watching said resident, took him to a shower to clean him up as food had spilled on him. The resident's clothing was changed by claimant. When resident's clothing was changed, resident was not put into a gait belt, as he is required to wear. The gait belt is required such that residents who are prone to balance problems can be kept from falling without risk of injury to the care provider. Resident's room holding his clothing and gait belts

was located right across the hall from the shower area. In addition to not having his gait belt, resident was in pajamas that were very long and overlapped his feet and resident was not put in his shoes.

Claimant and other similarly situated employees were trained that appropriate fitting clothing and gait belts for those residents requiring them are essential pieces of attire. Claimant was at the end of her shift and was in the process of changing this resident to another care provider. This change of resident was not completed. Claimant had entered into a restroom area and was not in the immediate vicinity of the resident when the resident fell and hit his head causing bleeding.

The last incident which led to claimant's termination also occurred at or around the time of a shift change. Claimant had received a call that she was needed at home. She stepped away from the table where she was guiding a resident. Claimant was granted permission to go home. Claimant had signed an accountability sheet for the resident but the procedure was not completed by the hand off of the resident to the next worker. The accountability sheet which is supposed to be signed off between the worker leaving shift, and the new worker coming on was left at a nursing counter. Claimant was preparing to leave and for a period of time was not in the immediate vicinity of a resident she was charged with providing individualized care. The resident was prone to walking out of the facility and wandering off. There were special instructions for this resident that he was not to be out of the immediate care of his provider. Claimant's desire to get out of the facility caused claimant, for some period of time, to leave the resident at least twenty feet or more away from her. This put the resident at risk.

These incidents led to claimant being dismissed from her employment for misconduct in failing to properly administer her job as she had been instructed.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning proper care and safety for residents. Claimant was warned on multiple occasions and had received a previous suspension for neglect of a patient.

The last incidents, which brought about the discharge, constitutes misconduct because claimant had been informed and trained and warned of her need to follow treatment plans and not neglect patients. In both of the instances that led to claimant's termination, claimant was attempting to expedite her leaving of the facility to the detriment of her residents' safety. The administrative law judge holds that claimant was discharged for acts of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated July 22, 2014, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/pjs