

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JANE K BRONDYKE

Claimant

APPEAL NO. 08A-UI-05743-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CHRISTIAN RETIREMENT HOMES INC

Employer

**OC: 05/18/08 R: 04
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Jane Brondyke, filed an appeal from a decision dated June 17, 2008, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on July 8, 2008. The claimant participated on her own behalf. The employer, Christian Retirement Homes, participated by Human Resources Director Kathy Walker and Executive Director Bert Vigen.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Jane Brondyke was employed by Christian Retirement Homes from February 24, 2003 until May 22, 2008 as a licensed practical nurse (LPN). At the time of hire, she received a copy of the employee handbook.

On May 18, 2008, a resident had fallen at the facility. The doctor was notified and x-rays were ordered. The x-rays were taken on May 19, 2008, and the report finding a fractured hip was faxed to Ms. Brondyke, who was the charge nurse, around 7:00 p.m. The claimant faxed a copy of the report to the resident's doctor but knew the office was closed and he would not receive it until the next morning. She did not call and notify him personally as required. This is a violation of the employer's policies as well as applicable statutes, and the employer was fined by the State of Iowa for the failure to notify the resident's doctor of the x-ray report.

Ms. Brondyke did not feel it was necessary to notify the doctor right away, because the resident was "comfortable" and the doctor had already been notified the day before that the resident had fallen. The claimant left a note for the night charge nurse to call the doctor, but the night nurse did not call him, either. The claimant was discharged for failing to fulfill the essential functions of her job.

REASONING AND CONCLUSIONS OF LAW:

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 claimant did not properly notify the resident's doctor of the results of the x-ray that showed a fractured hip. She knew she was to do this but did not feel it was necessary to do so immediately, since the fall had occurred the day before and the resident appeared "comfortable." This is not a judgment call the claimant should have made, but was required to notify the doctor for the safety and well-being of the resident in her care. Her failure to perform this essential function resulted in fines for the employer and placed the resident in jeopardy. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and is conduct not in the best interests of the employer. The claimant is disqualified.

DECISION:

The representative's decision of June 17, 2008, reference 01, is affirmed. Jane Brondyke is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw