

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DEBRA M TUCKER**  
Claimant

**APPEAL NO. 12A-UI-10373-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**OC: 07/15/12**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Debra Tucker (claimant) appealed a representative's August 20, 2012 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Care Initiatives (employer) for dishonesty in connection with her work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 19, 2012. The claimant participated personally. The employer was represented by David Williams, assistant manager of appellate services, and participated by David Mollenhoff, human resources coordinator; Christy Harris, assistant director of nursing; and Tammy Kappel, director of nursing. The employer offered and Exhibit One was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on December 1, 2001, as a full-time certified nursing assistant. The claimant signed for receipt of the employer's handbook on October 15, 2010. On June 20, 2011, the employer issued the claimant a final written warning and three-day suspension for smoking on company property and failure to follow instructions regarding giving showers. The employer notified the claimant that further infractions could result in termination from employment.

On July 14, 2012, the claimant was supposed to weigh a resident. The weight of the resident determined the resident's medication, nutrition, and fluids. The resident did not wish to be weighed and asked that the claimant record a weight the resident gave. The claimant entered the weight the resident gave into the computer. The claimant knew she should have put "refusal" into the computer. On July 15, 2012, the employer discovered the falsification and suspended the claimant. On July 19, 2012, the employer terminated the claimant.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for 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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). As persuasive authority, the falsification of an activity log book constitutes job misconduct. Smith v. Sorensen, 222 Nebraska 599, 386 N.W.2d 5 (1986). The claimant clearly disregarded the standards of behavior that an employer has a right to expect of its employees. The claimant's actions were volitional. When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. The claimant was discharged for misconduct.

**DECISION:**

The representative's August 20, 2012 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

---

Beth A. Scheetz  
Administrative Law Judge

---

Decision Dated and Mailed

bas/kjw