

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**TAMMY L WORKMAN**  
Claimant

**BETTENDORF HEALTHCARE  
MANAGEMENT**  
Employer

**APPEAL NO. 14A-UI-08529-MT**

**ADMINISTRATIVE LAW JUDGE  
AMENDED DECISION**

**OC: 07/27/14  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated August 20, 2014, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on September 8, 2014. Claimant participated personally. Employer participated by Katie Hughes, Assistant Director of Nursing. This amended decision is issued to correct scrivener's errors which create inconsistencies.

**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 July 16, 2014.

Employer discharged claimant on July 23, 2014 because claimant made multiple work performance mistakes. Claimant had many warnings about work performance. The final four incidents started July 14. Claimant failed to chart some skin measurements. Then claimant failed to perform bilateral treatment on lower extremities on a resident. Claimant also failed to chart times for a medication. These incidents are recorded in the charts.

The final incident allegedly occurred July 16 when claimant dressed a wound without orders. Claimant did not dress the wound but gave a resident a band aid. Claimant's testimony is more credible on this issue than the hearsay.

**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 work performance. Claimant was warned concerning this policy.

The last incident, which brought about the discharge, constitutes misconduct because claimant failed to perform work for which she had the ability. The recurrent failure to properly chart indicates carelessness of a high degree. The prior warnings weigh heavily toward a finding of carelessness. The fact that employer did not prove that claimant put a wound dressing on a resident does not cause employer's case to fail. Three other incidents are sufficient to prove a pattern of conduct not in the employer's and resident's' best interest. Claimant's actions prevented residents from getting proper care. The actions of claimant were detrimental to residents and even dangerous. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

**DECISION:**

The decision of the representative dated August 20, 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.

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Marlon Mormann  
Administrative Law Judge

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Decision Dated and Mailed

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