

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**VICKY S NEWMAN**  
Claimant

**APPEAL NO. 07A-UI-00401-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WHITING COMMERCIAL  
DEVELOPMENT CORPORATION**  
Employer

**OC: 12-03-06 R: 12  
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the January 3, 2007, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on January 29, 2007. The claimant did participate. The employer did participate through (representative) Katy Smith, Administrator, and Mary Lander, Director of Nursing.

**ISSUE:**

Was the claimant discharged for work-related misconduct?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a registered nurse full time beginning February 4, 1992 through December 7, 2006, when she was discharged.

On December 5, 2006, the claimant was to do a skin check on a resident who was returning from the hospital to the nursing home. The claimant failed to perform the skin check on the resident when she returned from the hospital. The claimant admitted to Ms. Lander that she had not made the skin check on the resident.

The claimant had been recently placed on probation for her job performance. The claimant was asked by other staff to check a resident who had breathing problems. The claimant admitted that she did not check the resident when staff reported problems to her. After being placed on probation, the claimant's job performance would temporarily improve for a period of time.

On November 25, 2006, the claimant had previously been disciplined for failing to properly document resident falls, not doing pulse checks, and not performing scheduled ear treatments.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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 Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. EAB*, 531 N.W.2d 645 (Iowa App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990).

The claimant's repeated failure to adequately and fully perform her job duties after having established the ability to do so is evidence of her willful intent not to do so and is misconduct. Benefits are denied.

**DECISION:**

The January 3, 2007, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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