

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STACY L HENDRICKSON
Claimant

APPEAL NO. 13A-UI-06193-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BISHOP DRUMM CARE CENTER
Employer

OC: 04/14/13
Claimant: Respondent (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Bishop Drumm Care Center (Bishop), filed an appeal from a decision dated May 13, 2013, reference 01. The decision allowed benefits to the claimant, Stacy Hendrickson. After due notice was issued, a hearing was held by telephone conference call on July 1, 2013. The claimant participated on her own behalf. The employer participated by Senior Human Resources Business Partner Carey Boysen and DON Joey Burt.

ISSUE:

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

FINDINGS OF FACT:

Stacy Hendrickson was employed by Bishop from December 12, 2000 until April 17, 2013 as a full-time resident care coordinator. Her job duties required her to produce and update care plans for residents in her unit. She had received a "letter of expectation" December 18, 2009, when there were problems with the charts partly due to a switch over to computer record keeping.

On April 8, 2013, a resident suffered a fall. DON Joey Burt reviewed the resident's chart and found no care plan. Ms. Hendrickson was off work at that time and so a review was done of the charts of all 22 residents in that unit since March 1, 2013. Most care plans were done but not signed off by Ms. Hendrickson every three months as required.

Ms. Hendrickson maintained she had updated all the charts before going on her leave and the quality assurance person had reviewed the charts some time after March 1, 2013, and had not brought any deficiencies to her attention.

When the claimant returned to work on March 15, 2013, she was interviewed by Mr. Burl and said she had no explanation of the deficiencies in the charts. Two days later she was discharged.

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 employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The administrative law judge does not find the claimant's testimony to be any more or less credible than that of the employer. But the employer did not provide testimony from the quality assurance person nor examples of the deficient charts.

If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. *Crosser v. Iowa Department of Public Safety*, 240 N.W.2d 682 (Iowa 1976). The administrative law judge concludes that the testimony provided by the employer is not more persuasive than the claimant's denial of such conduct. The employer has not carried its burden of proof to establish that the claimant committed any act of misconduct in connection with employment for which she was discharged. Misconduct has not been established. The claimant is allowed unemployment insurance benefits.

DECISION:

The representative's decision of May 13, 2013, reference 01, is affirmed. Stacy Hendrickson is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css