

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

VICKI A KREMER
3107 WILLOW RD
HOPKINTON IA 52237

MONTICELLO NURSING HOME COMPANY
PO BOX 5428
CEDAR RAPIDS IA 52406-5428

Appeal Number: 05O-UI-03350-CT
OC: 12/19/04 R: 03
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Vicki A. Kremer filed an appeal from a representative's decision dated January 7, 2005, reference 01, which denied benefits based on her separation from Monticello Nursing Home Company. After due notice was issued, a hearing was held by telephone on January 27, 2005. The February 9, 2005 decision of the administrative law judge affirmed the disqualification from benefits. Ms. Kremer filed a further appeal with the Employment Appeal Board which, on March 23, 2005, remanded the matter for a new hearing because the record of the prior proceedings could not be located.

Pursuant to the remand, due notice was issued scheduling the matter for a telephone hearing on April 19, 2005. The hearing was recessed and reconvened on May 4, 2005. Ms. Kremer

participated personally and offered additional testimony from Crystal Strawn, Pearl Jeurissen, Bridget Theilen, Joanna Kupchik, and Mackenzie Boeding. The employer participated by Dave Chensvold, Administrator.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Kremer was employed by Monticello Nursing Home Company from May 29, 2003 until December 16, 2004 as a full-time RN. She was discharged because of her conduct on December 11 and 12.

The facility was short-staffed on the weekend of December 11 and 12. Ms. Kremer was working as a charge nurse and was openly critical of management because of the situation. She voiced criticism of the director of nursing for not coming in to help when she knew they were short-staffed. She voiced some of her complaints to family members of residents. During the hearing, Ms. Kremer denied that she had complained about the staffing situation during the weekend at issue. In her fact-finding statement to Workforce Development, she stated that she had made comments that she should not have made as a charge nurse. She also acknowledged in her fact-finding statement that she had discussed the staffing situation with families of residents.

Ms. Kremer's conduct of that weekend was brought to management's attention and, as a result, she was discharged on December 16, 2004. The next most previous disciplinary action had been on December 9 when Ms. Kremer lost a medication patch. The patch was found. On February 16, 2004, she received a warning because of the lack of documentation in some areas. On April 29, 2004, she received a warning because she failed to follow the required protocol for faxes. None of the above conduct was repeated after the warnings or counselings.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Kremer was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The administrative law judge concludes that Ms. Kremer's conduct of December 11 and 12 is sufficient, standing alone, to constitute disqualifying misconduct. The administrative law judge appreciates that she was frustrated with the staffing situation. However, her response, being openly critical of the employer, had the potential of adversely impacting the employer's business.

If Ms. Kremer had voiced her complaints only to other employees, this might be a different case. However, she also voiced her concerns in the presence of residents and family members of residents. Her conduct could have caused residents and their families to question whether appropriate care could be given under such circumstances. Her conduct could have caused residents and families to seek alternative placements because of concerns that there was not sufficient staff to meet their needs. As a charge nurse, it was up to Ms. Kremer to set the tone for others working under her. Her comments had the potential of causing dissension among her subordinates.

Although Ms. Kremer denied during the hearing that she had voiced any complaints, her fact-finding statement seems to state to the contrary. Her negative comments about the

staffing situation in the presence of staff, residents, and families of residents constituted a substantial disregard of the employer's interests. For the above reasons, the administrative law judge concludes that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied.

DECISION:

The representative's decision dated January 7, 2005, reference 01, is hereby affirmed. Ms. Kremer was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

cfc/sc