

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

SADIE M MOSBY
PO BOX 1302
WATERLOO IA 50704

CARE INITIATIVES
c/o TALX UC EXPRESS
PO BOX 6007
OMAHA NE 68106-6007

Appeal Number: 05A-UI-06811-CT
OC: 06/12/05 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:

Sadie Mosby filed an appeal from a representative's decision dated June 29, 2005, reference 01, which denied benefits based on her separation from Care Initiatives. After due notice was issued, a hearing was held by telephone on July 19, 2005. Ms. Mosby participated personally. The employer participated by Evon Wedemeier, Director of Nursing, and Jennifer Sergeant, LPN Charge Nurse. The employer was represented by Dawn Fox of TALX UC eXpress.

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. Mosby was employed by Care Initiatives from June 7, 1999 until June 13, 2005. She became a registered nurse in March of 2005 and was last employed full time as a registered nurse. She was discharged after she administered medication without a doctor's order.

When a resident leaves the facility to be hospitalized and the stay is more than 23 hours, all prescribed medications are discontinued. Upon the resident's return to the facility, new orders are written for medications. On June 2, 2005, a resident by the name of Eugene returned to the facility after a brief hospital stay. Prior to his hospitalization, he had been taking Temazepam, a controlled narcotic, as needed for sleep. On June 5, Ms. Mosby administered Temazepam to Eugene even though there was no doctor's order on file for it. Prior to administering the drug, she was advised by Jennifer Sergeant that there was no order on file for the medication. Ms. Mosby administered the drug at approximately 10:15 p.m. She contacted the doctor at approximately 10:42 p.m. to have an order written for the Temazepam, which the doctor did do.

The employer learned on June 8 that Ms. Mosby had administered medication without a doctor's order. She was suspended pending a further investigation. She was notified of her discharge on June 13, 2005. The above incident was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Mosby 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). Ms. Mosby was discharged for administering a medication without a doctor's order. She knew that Eugene had been away from the facility for a hospital stay. Therefore, it was her responsibility to check his records to determine what orders had been written for medications upon his return to the facility. She should not have assumed that, because he had taken the medication before, it was still appropriate to administer it. He may well have been prescribed new medications that conflicted with taking Temazepam. Without checking his records, Ms. Mosby would have no way of knowing this. Furthermore, she was told by Ms. Sergeant before she administered the medication that there was no order on file for it. In spite of this, Ms. Mosby gave the medication without checking Eugene's records.

There was no emergency that required Ms. Mosby to administer the Temazepam on June 5. As a registered nurse, she knew or should have known that she was not authorized to administer medications without a doctor's order on file. The fact that the doctor later prescribed the medication does not alter the fact that she was practicing outside the scope of her license. Her conduct constituted a substantial disregard of the standards the employer had the right to expect from a registered nurse. Her conduct could have resulted in legal liability for the employer if the medication caused injury or illness. For the reasons stated herein, it is concluded that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied.

DECISION:

The representative's decision dated June 29, 2005, reference 01, is hereby affirmed. Ms. Mosby was discharged by Care Initiatives 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/kjw