

rooms were not cleaned and the trash had not been picked up. Marie Fox, RN reported that on August 12 a patient in room 236 was restless and confused sitting with his legs over the edge of the bed without a bed check (alarm) or chair check, as she had requested claimant install two and one-half hours prior.

Employer warned claimant on August 3, 2005 about not fully training new employee Rochelle when she did not explain the difference between four- and eight-hour vital checks. Rochelle also noted that claimant was nodding off at the computer. On May 24, a student asked claimant for help to clean a broken colostomy bag but claimant charted instead. She was placed on additional 60 days' probation on June 8, 2005. After the initial request was made in February 2005, claimant submitted her action plan on June 13 agreeing to help coworkers when asked. On February 8, 2005, a patient needed to be cleaned but nothing more than water was used and no skin barrier cream was applied to prevent skin lesions. This was not discovered until after claimant left for the day and had not advised the next shift it remained to be done.

In January 2005, a patient reported that claimant had not changed her sheets and had not given her a bath as required. On August 3, 2004, claimant said a patient was ready to leave the facility but had not yet given the patient a bath. In August 2004 the standards of care were changed to require daily baths.

The claimant has received unemployment benefits since filing a claim with an effective date of August 14, 2005.

#### 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

While claimant argued that she had no disciplinary problems under the former manager, Mary Jane Colburn took over about two-and-one-half years ago and Monica Denteicher worked there for eight years, then five years with Colburn, and became manager in August 2005. Claimant's disciplinary record dates back to August 2004. Thus her claim does not ring true to the facts. Her repeated failure to assist coworkers, bathe patients as scheduled, use proper skin care techniques, clean rooms, and her misrepresentations to employer about patients who were not bathed constitutes disqualifying misconduct. Benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The September 13, 2005, reference 01, decision is reversed. 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. The claimant is overpaid benefits in the amount of \$83.00.

dml/kjw