

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRENDA S RUNYAN
Claimant

APPEAL NO. 09A-UI-15453-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**“RESIDENTIAL ALTERNATIVES OF IOWA
“WINDMILL MANOR**
Employer

**OC: 09/20/09
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Windmill Manor filed a timely appeal from a representative's decision dated October 9, 2009, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was scheduled for and held on November 16, 2009. The claimant participated personally. Participating as a witness was Elicia Runyan. The employer participated by Amber Harsch. Claimant's Exhibit One and Employer's Exhibit A were received into evidence.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Brenda Runyan was employed as a full-time certified nursing assistant for Windmill Manor from August 4, 2009 until September 6, 2009 when she was discharged from employment.

After completing her work shift from the morning of September 6, 2009, Ms. Runyan was examined in an emergency room due to pain associated with an injury that she believed that she had sustained at work. The claimant was advised not to return to work that day and was given a statement by her physician that she could return to work on Wednesday, September 9, 2009. (See Exhibit One). Ms. Runyan was also given medication to ease her pain. The claimant attempted to contact the employer directly by calling the facility to inform them that she would not be able to return to work that day for the second shift beginning at 11:45 p.m. To ensure that the message was received, the claimant's daughter, Elicia Runyan, also called the facility and spoke directly to Amber Harsch explaining the situation and her mother's inability to report for the second shift.

Elicia Runyan was informed by Ms. Harsch that the employer did not take doctor's notes and that if the claimant failed to report for scheduled work that afternoon, she would be discharged.

When Ms. Runyan later woke that day her daughter informed her of the conversation and Ms. Harsch's declaration the claimant would be discharged if she had not reported for work. The claimant considered that she had been terminated at that time.

The following day Ms. Runyan was contacted by Ms. Harsch. The claimant, however, reasonably considered that she had already been discharged and disconnected from the call.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes that the evidence in the record does not establish the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

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.

In this case the evidence establishes that the claimant was injured and sought medical attention for what she reasonably considered to be a work-related injury. The evidence establishes that Ms. Brenda Runyan attempted to provide notification to the employer that morning within the time frame allotted to provide notice of impending absences. As the claimant had taken a sedative by her doctor's prescription, the claimant's daughter also called the facility to ensure that proper notification had been made. During the conversation with Ms. Harsch, Elicia Runyan was unequivocally told that doctor's notes were not acceptable and that the claimant would be discharged if she did not report for scheduled work or come in for an assessment. As

the claimant was sleeping due to the sedative prescribed by her physician and had been certified as unable to report for work, Ms. Runyan did not report for work that day and reasonably considered herself to be terminated.

The evidence in the record establishes that the claimant under the circumstances made more than one reasonable attempt to provide notification to the employer and that the employer was aware of the claimant's inability to report for work and the reason for it. While the decision to discharge Ms. Runyan may have been a sound decision from a management viewpoint, the claimant's discharge did not result from intentional disqualifying misconduct. Benefits are allowed.

DECISION:

The representative's decision dated October 9, 2009, reference 01, is affirmed. The claimant was dismissed under non disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs