

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WANDA GORDON**  
Claimant

**APPEAL NO: 14R-UI-08502-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**COMFORT CARE MEDICARE INC**  
Employer

**OC: 05/25/14**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the June 12, 2014, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 19, 2014. The claimant participated in the hearing. Lindsey Burton, Director of Human Resources and Tammy Clark, Director of Finance, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time RN/Case Manager for Comfort Care Medicare from August 12, 2013 to February 24, 2014. She was discharged for attendance and paperwork issues.

The employer requires employees who are going to be absent to notify their supervisor they will be unable to report to an assignment two to three hours before the first visit of the day. Absenteeism is monitored by the employee's direct supervisor. The employer looks for patterns of absenteeism such as Monday or Friday absences, Saturday or Sunday absences or just prior to or after a holiday absences. If the employer deems the employee's absenteeism excessive it issues two written warnings followed by termination if the employee continues her pattern of absenteeism.

The claimant was absent Monday, October 14, 2013; she was absent one-half of the day Friday, October 25, 2013; she was absent Tuesday, November 12, 2013; she was absent one-half of the day Monday January 6, 2014, because she worked Christmas Eve, Christmas Day and New Year's Day and the employer offered her an extra one-half day off; she was absent Tuesday, January 7, 2014; she was absent one-half of the day Wednesday, January 22, 2014, because after she reported for work she discovered she had shingles; and she was

absent one-half of the day Thursday, January 30, 2014, because of weather conditions. She had eight additional excused absences with medical notes.

On December 12, 2013, the administrator reiterated her expectations of documentation to employees and had every nurse in every office sign the policy. The claimant signed the document December 16, 2013.

The claimant was far behind on her required paperwork for the employer. The paperwork must be submitted within 48 hours of a visit with a client and the claimant was behind several cases, some dating to December 2013, as of the week of February 10, 2014. The employer offered to let the claimant work in the office in Cedar Rapids the week of February 10, 2014, solely to catch up on her paperwork and the claimant agreed to do so. The employer expected her to be completely caught up by Friday, February 14, 2014. On February 11, 2014, the claimant told her supervisor she would have all of her outstanding paperwork done by the end of the day but did not turn in any documentation by the time she stated. By February 14, 2014, the claimant still had 18 cases that were not completed as required. The claimant's failure to complete her paperwork in a timely manner impacted the employer greatly as it could not bill for cases that were undocumented.

The claimant called in Monday, February 17, 2014, and reported she would not be able to work that week because she was moving. When she returned Monday, February 24, 2014, she notified the employer she had to leave to attend a house closing that day. Between the claimant's attendance and her failure to complete her required paperwork the employer made the decision to terminate the claimant's employment February 24, 2014.

The claimant received a written warning November 21, 2013, for insubordination, disruptive behavior, using profanity and creating a hostile work environment; a written warning January 9, 2014, for late paperwork; a written warning January 11, 2014, for use of profane and abusive language; a written warning January 13, 2014, for making negative comments about the employer and her job; a written warning February 10, 2014, for insubordination and refusal to complete a required task after she refused to work with a specific client; and a written warning February 11, 2014, for attendance and failing to complete her paperwork in a timely manner.

#### **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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant was capable of completing the required paperwork to the employer's expectations as she had done well with the paperwork when she began her position with the employer. Despite demonstrating the ability to do the paperwork in a timely manner, the claimant failed to keep up with the paperwork as required. The claimant knew the paperwork was to be completed within 48 hours of a visit but still did not keep up as evidenced by the fact that as of February 24, 2014, she had at least 18 incomplete files remaining, including at least one file from December 2013.

Additionally, after being allowed one week of working in the Cedar Rapids office solely on her paperwork, the claimant still had not completed it and then followed that week by taking the next week off to move, even though she had not provided the employer advance knowledge of her move. The last straw for the employer occurred when after she failed to complete the paperwork after being given one week to work on it exclusively, and then taking the following week to move in a rather hurried manner, the claimant then reported for work but soon left that day to go to a home closing. Those three events combined were the final straw for the employer.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

**DECISION:**

The June 12, 2014, reference 01, decision is affirmed. 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.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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