

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

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GOOD SAMARITAN SOCIETY INC
c/o FRICK UC EXPRESS
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ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-09827-H2T
OC: 08-01-04 R: 04
Claimant: Respondent (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/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 30, 2004, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on October 5, 2004. The claimant did participate. The employer did participate through Bob Johannsen, Administrator and (representative) Linda Hemm, Nurse Manager. Claimant's Exhibit A was received. Employer's Exhibit One was received. Participating at the hearing on October 21, 2004 was the claimant and her witness, Marlene Jack, LPN. The employer did participate through Bob Johannsen, Administrator; Linda Rutledge, Director of Nursing; and Linda Hemm, Nurse Manager.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as an RN Charge Nurse full time beginning April 24, 1994 through July 27, 2004 when she was discharged. On July 25, 2004 the claimant did not follow orders given by a nurse manager, Linda Hemm. The claimant failed to document as she was told and failed to follow through with charting her actions. The claimant admitted at the hearing that she failed to chart correctly for the patient. The employer alleges that the claimant is just not competent to perform as a nurse. The employer believes that the claimant performed to the best of her ability and that she was not intentionally trying to perform in a sub-par or less than standard manner. The claimant never did meet the employer's expectations with regard to her work performance. The claimant did perform the job to the best of her ability.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979). Where an individual is discharged due to a failure in job performance, proof of that individual's ability to do the job is required to justify disqualification, rather than accepting the employer's subjective view. To do so is to impermissibly shift the burden of proof to the claimant. Kelly v. IDJS, 386 N.W.2d 552 (Iowa App. 1986). Inasmuch as she did attempt to perform the job to the best of her ability but was unable to meet the employer's expectations, no intentional misconduct has been established, as is the employer's burden of proof. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Accordingly, no disqualification pursuant to Iowa Code Section 96.5-2-a is imposed.

While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983).

DECISION:

The August 30, 2004, reference 02, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

tkh/b