

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CARRIE J SANDERSFELD
Claimant

APPEAL NO. 10A-UI-00880-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CHRISTIAN RETIREMENT SERVICES INC
Employer

OC: 12/13/09
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated January 11, 2010, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on March 10, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Autumn McIntyre. Thomas Hobart, attorney at law, participated in the hearing on behalf of the employer with witnesses, Kim Bergen-Jackson and Nancy Thompson. Exhibits 1-14 were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?
Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked full time for the employer as a night-shift nurse from February 9, 2007, to December 12, 2009. She was informed and understood that under the employer's work rules, courteous conduct and language and a pleasant and positive attitude was expected and rudeness in word or action was unacceptable.

The claimant was working the night shift from 11:00 p.m. on December 11 to 7:00 am on December 12, 2009. One of the residents she was to provide care for had entered the facility after knee surgery. The resident's doctor had prescribed two medications for pain and spasms. Percocet was ordered to be given if requested every four hours. Vistaril, which has sedative qualities, was ordered to be given if requested four times per day. Neither drug was scheduled to be automatically given at particular time, but instead were PRN, which means as requested.

The resident believed both drugs were "scheduled" to be given every four hours if requested. The resident was given both medications at about midnight on December 11. She was concerned because the night before no one woke her up to ask her if she wanted the

medications and she believed that set her back in pain management so she set her alarm for 4:00 a.m.

She put her call light on at about 4:00 a.m. on December 12 and the nurse's aide responded. She told the nurse's aide that it was time for her scheduled pain medication. The nurse's aide said she would go check with the nurse. The claimant was in the restroom at the time so the nurse's aide spoke to another nurse, Autumn McIntyre, about the resident asking for her scheduled medications.

McIntyre went to the resident's room. The resident thought McIntyre was the nurse's aide. She told McIntyre she was scheduled for medications. McIntyre said she would check the medical administration record (MAR). McIntyre consulted the MAR and noticed there were no scheduled medications, but only the PRN Percocet and Vistaril. McIntyre re-entered the room and informed the resident that there were no medications scheduled for 4:00 a.m. The resident insisted that she had scheduled medication and she wanted something for pain. McIntyre then realized was talking about her PRN medication and told the resident that she would check to see what she had been prescribed for pain and if she could have anything.

McIntyre then informed the claimant what has transpired. The claimant got the Percocet as the resident had requested medication for pain and went into the room. She put the Percocet on the table next to the recliner where the resident was sitting. The resident picked up the Percocet and said she needed the blue pills (referring to the Vistaril) too. The claimant explained that if she had the Vistaril then, she could only have two more doses before the end of the day and they were trying to stretch the doses out more. The resident said she wanted the Vistaril. The claimant then told the resident that the orders said she could have it if she requested it. The resident replied that she was requesting it. The claimant then told the resident that she would do what the resident wanted, but if the resident ran out of the Vistaril by the second shift and was miserable, she would not care because she would not be working then and would not have to listen to her.

The claimant then went out and got the Vistaril and brought it back. She put the Vistaril on the table as well. The resident told the claimant that she was going to report her. The claimant said that was fine and provided the resident her name and her supervisor's name.

The resident reported what had happen to management and informed management that she was frightened by the claimant's bullying attitude and conduct toward her.

The employer discharged the claimant on December 15, 2009, due the claimant's treatment of the resident on December 12, 2009.

The claimant filed for and received a total of \$774.00 in unemployment insurance benefits for the weeks between December 13, 2009, to January 2, 2010.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code section 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the

employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof.

This case is difficult because I do not believe the incident involving the resident was as dramatic and alarming as the resident portrayed or as benign as the claimant testified. One thing is certain about the resident's testimony. She attributes everything negatively that happened to her at 4:00 a.m. to the claimant, including things the claimant had nothing to do with. She misperceives McIntyre as being a nurse's aide relaying information from the claimant, so that when the claimant actually enters the room, she believes the claimant has told the nurse's aide that she cannot have her pain medication, which sets the stage for the rest of the encounter. In fact, McIntyre communicated on her own that that resident had no scheduled medications.

The resident, even during the hearing, insisted she was right about her doctor's orders that she was scheduled for both medications every four hours. But she was not correct, and the information given to the resident by the claimant and McIntyre was accurate. She was not scheduled for any medications. She could have Percocet every four hours if she requested it. Vistaril could be given up to four times per day if she requested it. She was also upset that she was not awakened the night before to see if she wanted her medication. But if medication is not scheduled, it would be illogical to wake up a resident who perhaps would benefit from sleep to ask if she wanted medication. The first time the claimant entered the room on December 12, she provided the resident with the pain medication, Percocet, as requested. She questioned the Vistaril because the dosage order for Vistaril was not identical to the Percocet, as the resident thought.

On the other hand, even though the information provided to the resident was accurate, it is difficult to understand why it was necessary for the claimant (or McIntyre for that matter) to make such a point of correcting the resident about "scheduled" versus "PRN" medication when the resident was clearly requesting medication because she was in pain at 4:00 a.m. I am not convinced that the claimant used a raised tone of voice in speaking with the resident or was "in her face" in an intimidating fashion. I am convinced the resident accurately testified about what the claimant said before she went to get the Vistaril, which was if the resident ran out of the Vistaril by the second shift and was miserable, she would not care because she would not be working then and would not have to listen to her. This comment was cruel and unnecessary and amounts to rude conduct in violation of the employer's work rules, which rises to the level of work-connected misconduct under the unemployment insurance law.

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding an employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the

overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated January 11, 2010, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs