

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EVELYN M BUSH
Claimant

APPEAL NO. 11A-UI-05339-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA HOSPICE LLC
Employer

**OC: 03-13-11
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 15, 2011, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on May 17, 2011. The claimant did participate. The employer did participate through Branch Director. Claimant's Exhibit A was entered and received into the record.

ISSUE:

Was the claimant discharged due to job related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a registered nurse case manager full time beginning in October, 2009 through March 14, 2011 when she was discharged. The claimant was discharged for failing to follow the employer's policies with regard to making calls on patients. The claimant was on-call the weekend of March 12 through March 14. At approximately 8:00 p.m. on March 13 a patient called her complaining of nausea and dizziness. Ms. Bush counseled him over the telephone but did not go to his home to visit him. At approximately 1:00 a.m. on March 14 the patient called the claimant again as she was the nurse on call. The patient complained of the same issues. The claimant did not make a house call on the patient at that time. The employer's policies, which the claimant was aware of, provide that the on-call nurse is to make a home visit if the same patient calls twice with the same symptoms or issues. The employer's policy is in place in part to comply with Medicare guidelines upon which the employer relies for payment. The same patient called the claimant again on March 14 at 3:18 a.m. complaining of the same problems and symptoms. Even after the third call in a seven-hour period, the claimant still did not make a visit to the patient's home. The next morning, the patient was taken to the emergency room by another family member where he was admitted for additional treatment. The patient had specifically sought treatment from the employer through Hospice because he wanted to avoid hospitalization and thought he could receive home nursing care. The patient's daughter as well as the regular nurse case manager of the patient called the employer and complained about the claimant's failure to make a home visit during the weekend of March 12 through March 14. The patient never told the claimant that

he did not want her to make a home visit. His continued calling the nurse indicates he was in need of her help. The claimant knew that when the second call came from the patient she should have made a home visit. The claimant had received a final written warning on March 2, 2011 for failure to perform the essential functions of her job.

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 § 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.

The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. EAB*, 531 N.W.2d 645 (Iowa App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The administrative law judge is persuaded that the claimant knew or should have known that after the patient made the second call complaining about the same symptoms she was obligated to make a home visit. The patient never told the claimant not to make the home visit. She simply failed to perform her job duties. Claimant's repeated failure to perform her job duties after having been warned is evidence of carelessness to such a degree of recurrence as to rise to the level of disqualifying job related misconduct. Benefits are denied.

DECISION:

The April 15, 2011 (reference 02, amending 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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs