

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARY H FIELDS

Claimant

APPEAL NO. 13A-UI-10812-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RED OAK REHAB & CARE CENTER INC

Employer

OC: 08/25/13

Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated September 17, 2013, reference 01, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on October 16, 2013. Claimant participated. The employer participated by Ms. Morgan Pedersen, Director of Nursing and Ms. Lisa Eastman, Administrator.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Mary Fields was employed by Red Oak Rehab & Care Center, Inc. from January 7, 2013 until August 28, 2013 when she was discharged from employment. Ms. Fields was employed as a full-time registered nurse/charge nurse and was paid by the hour. Her immediate supervisor was Morgan Pedersen.

Ms. Fields was discharged from employment on August 28, 2013 based upon a complaint from an alert and orientated resident who reported that Ms. Fields had been rude or abrupt with her. The resident requested that Ms. Fields no longer be allowed to care for her. The claimant had been previously warned on June 10, 2013 for inappropriate interaction with residents where it had been alleged the claimant had been unkind and rude.

The decision to terminate Ms. Fields on August 28, 2013 also took place because Ms. Fields had been observed leaving a medication cart unlocked and unattended after being specifically verbally warned not to leave the cart unlocked and unattended two days before on August 21, 2013.

The claimant denies being rude or abrupt with the female resident on August 23, 2013. It is the claimant's belief that the resident was upset because the claimant was unwilling to leave "pills" in the resident's room for the resident to take later.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the employer has met its burden of proof in establishing the claimant's discharge took place under disqualifying conditions. It has.

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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In this matter the evidence establishes that Ms. Fields was discharged based upon the director of nursing's personal observation that Ms. Fields was leaving the medication cart unlocked and unattended in violation of company policy and a verbal warning had been issued to her two days previously. On the same date a resident who is alert and orientated directly complained about

Ms. Fields' demeanor stating that the claimant had been rude or abrupt with her and requested that Ms. Fields no longer be assigned to provide care to her. The employer considered the complaint to be credible because Ms. Fields had previously been warned for similar conduct with another resident in June 2013.

Although the administrative law judge is aware that the resident may have been upset because Ms. Fields was not allowed to leave "pills" in the resident's room for the resident to take later, the administrative law judge nevertheless concludes that the employer has sustained its burden of proof in establishing disqualifying misconduct based upon the claimant's failure to lock the medication cart as required when it was unattended. Ms. Fields was aware of her responsibility to do so and had been warned about the matter two days before the final incident. The administrative law judge concludes that the claimant was, therefore, discharged under disqualifying conditions. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated September 17, 2013, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs