

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VICKTORIA K SACKETT
Claimant

APPEAL NO. 13A-UI-06938-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRESTVIEW ACRES INC
Employer

OC: 05/12/13
Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Crestview, filed an appeal from a decision dated May 31, 2013, reference 01. The decision allowed benefits to the claimant, Vicktoria Sackett. After due notice was issued a hearing was held by telephone conference call on July 17, 2013. The claimant participated on her own behalf. The employer participated by Administrator Harold McElderry, Co-Owners Jerry and Nancy Boyna and Operations Manager Terry Cooper.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Vicktoria Sackett was employed by Crestview from February 8, 2010 until May 13, 2013 as a full-time Director of Nursing (DON). In April 2013 the employer learned from another facility the State of Iowa was doing a review of nursing homes regarding the documentation and procedures for “major injuries” to resident.

The procedure is for a “major injury” form to be filled out. The facility and the resident’s doctor are to review the information in the report. If it is decided the resident should be hospitalized or ‘referred for higher medical care’ then the incident must be reported to the State of Iowa. If a facility has violated these provisions it is subject to fines unless it has already put in place corrective action to address the problem.

Administrator Harold McElderry, Co-Owner Jerry Boyna and Operations Manager Terry Cooper all asked Ms. Sackett, at different times in April and May 2013, if any resident had been hospitalized after a major injury form had been filled out and signed. She said no. It was later discovered by the inspector from the state there was at least one resident who had been hospitalized in November 2012 with a major injury form filled out and signed, which had not been reported as required.

In addition, the inspection revealed a resident had been restrained without a signed order from a doctor or consent form signed by a family member being in the file. Ms. Sackett had delegated the restraint and the obtaining of signed documentation to another nurse but had not followed up to make sure everything had been done properly.

The claimant was discharged on May 13, 2013, by Mr. McElderry and Mr. Cooper for being untruthful when questioned about the reporting of the major injury and improper restraint.

Vicktoria Sackett has received unemployment benefits since filing a claim with an effective date of May 12, 2013.

REASONING AND CONCLUSIONS OF LAW:

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 claimant was discharged for giving incorrect information more than once about the major injury situation. Because of her incorrect answers the employer was fined. Ms. Sackett does not appear to have made an effort to review the files and documentation before she gave an answer, and only when directed to specific files by the inspector did she take the opportunity to check.

Her assertion that the procedure had changed is not convincing, especially as specific instructions on what procedure to follow appear on the form itself. In addition, as the DON it was her job to check that her subordinates had accurately followed her orders regarding the restraint documentation.

This is not a one-time incident or mistake but a series of events causing measurable harm to the employer in the form of the fines imposed. These could have been avoided had Ms. Sackett given accurate information by checking the records and files before declaring there were no areas of concern about hospitalized residents.

Failure to work to the best of one's ability and giving inaccurate information to the employer without checking, is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

DECISION:

The representative's decision of May 31, 2013, reference 01, is reversed. Vicktoria Sackett is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs