

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SUSAN A BROTEN**

Claimant

**ABCM CORPORATION**

Employer

**APPEAL NO: 11A-UI-01837-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/05/10**

**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated February 14, 2011, reference 01, that held she was discharged for misconduct on December 7, 2010, and benefits are denied. A telephone hearing was held on March 18, 2011. The claimant, and witnesses, Jackie Evans and Janette Polk, participated. Lisa Thein, Administrator, Cindy Eschen, D.O.N., Deb McCarty, RN, Karrie Peterson, RN, and Diane Van Lindingham, HR person, participated for the employer. Employer Exhibit 1 was received evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on September 26, 2000, and last worked for the employer as a full-time C.N.A. on December 7, 2010. The employer discharged claimant on December 7 for failing to perform job duties and falsifying patient records.

The employer conducted audits of claimant's bathing residents Patricia and Eunice on December 1, and December 4 with a follow-up on December 5. The employer used a washable marker to place marks on the hips and feet of the residents to see whether claimant was bathing them. The audit result showed claimant had bathed resident Eunice based on the erasure of the marks while she did not bathe resident Patricia based on the presence of the marks.

Claimant charted she bathed resident Patricia on December 1, but during the hearing she admitted she forgot. Claimant drew a line on the chart that she bathed resident Patricia on December 4, but she did so on December 5. Nurse Peterson checked resident Patricia on December 5 after claimant completed her work shift and the washable marks remained. Both residents were immersed in a whirlpool bath.

## REASONING AND CONCLUSIONS OF LAW:

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 administrative law judge concludes the employer has established that the claimant was discharged for misconduct in connection with employment on December 7, 2010, for repeated failure to perform job duties that was compounded by falsification of resident records.

The employer evidence showed claimant properly bathed and charted for resident Eunice on the same days she did not for resident Patricia. Claimant's initial failure on December 1 is arguably human err, but when she failed to perform the same duty for the same resident a few days later and charted having done so, it shows a deliberate pattern of job disqualifying misconduct.

**DECISION:**

The department decision dated February 14, 2011, reference 01, is affirmed. The claimant was discharged for misconduct on December 7, 2010. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs