

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER R MORGAN
Claimant

APPEAL NO. 07A-UI-00637-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 12/17/06 R: 03
Claimant: Respondent (2)

Section 96.5(2)a – Discharge
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Care Initiatives, filed an appeal from a decision dated January 8, 2007, reference 01. The decision allowed benefits to the claimant, Jennifer Morgan. After due notice was issued, a hearing was held by telephone conference call on February 1, 2007. The claimant participated on her own behalf. The employer participated by Human Resources Director Kyle Merry, Director of Nursing (DON) Linda Staggs, Certified Nursing Assistant (CNA) Jamie Robinson and was represented by TALX in the person of Mike Sloan. Exhibit One was admitted into the record.

ISSUE:

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

FINDINGS OF FACT:

Jennifer Morgan was employed by Care Initiatives from October 24, 2005 until December 15, 2006. She was a full-time licensed practical nurse working 2:00 p.m. to 10:00 p.m.

The claimant received written warnings on December 9 and 11, 2006, for policy violations. She had not dated orders and had propped the medication room door open. On December 13, 2006, a nurse reported a skin lesion on one of the residents and the employer did an investigation to determine when the spot was first detected. The investigation revealed a CNA had reported the area to Ms. Morgan the evening before and policy requires the nurse to do an assessment. The claimant did not do the assessment and was notified by DON Linda Staggs she was being suspended pending further investigation.

The employer investigated further by interviewing staff about the incident and was notified the claimant had been informed of another skin area on a resident on an earlier date which she had also failed to assess. She was discharged on December 15, 2006, by Director of Human Resources Kyle Merry.

Jennifer Morgan has received unemployment benefits since filing a claim with an effective date of December 17, 2006.

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 failed to follow policy by not doing the assessment on the resident as soon as the skin spot was reported to her. As a result, the spot had gone untreated until it was detected on another shift. The employer must provide for the safety and health of the dependent adults in its charge and the claimant's failure to do the assessment interfered with its ability to do so. This is conduct not in the best interests of the employer and the claimant is disqualified.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of January 8, 2007, reference 01, is reversed. Jennifer Morgan is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$1,662.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw