

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATHERINE GLANZ
Claimant

APPEAL NO: 11A-UI-13821-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

WESLEY RETIREMENT SERVICES INC
Employer

**OC: 09-18-11
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 10, 2011, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 28, 2011. The claimant participated in the hearing. Jessie Young, DON, and Sarah Frost, human resources partner, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time RN for Wesley Retirement Services from July 7, 2009 to September 16, 2011. She was discharged for failure to follow doctors' orders. On August 2, 2011, the claimant failed to document an appointment for a resident and the resident missed the appointment, resulting in the employer being six days out of compliance with the doctor's order. On August 3, 2011, the employer provided additional education to the claimant about documenting everything. On August 4, 2011, a resident fell and the claimant did not correctly complete the incident report. On August 7, 2011, DON Jessie Young was completing charts and doctor orders and noticed they did not match the treatment record done by the claimant for one resident. Ms. Young conducted a one-on-one meeting with the claimant but did not issue a warning to her at that time, because the claimant had several changing orders at that time, so Ms. Young went over the orders with the claimant. On September 6, 2011, a resident fell and the claimant did not complete the incident report completely. Ms. Young was also performing chart audits at that time and found the claimant failed to follow doctor's orders regarding a resident with a urinary tract infection and, consequently, the resident did not receive needed antibiotics for four days. On September 7, 2011, Ms. Young issued the claimant a verbal warning by phone for failing to double lock the narcotics room and prepared, but did not issue, a written warning for the claimant because of the medication error. On September 13, 2011, several staff members reported concerns to Ms. Young regarding the claimant failing to follow doctors' orders and were told to be specific and write their complaints down and Ms. Young

would start to audit the claimant's charting. On September 15, 2011, a CNA bumped a resident in the face with a mechanical lift and Ms. Young asked the claimant to complete an incident report and a written warning for the CNA. The claimant did not do the written warning to Ms. Young's satisfaction and she ended up reviewing the warning with the CNA herself. On September 15, 2011, a restorative aide asked the claimant to look at a resident's bottom and evaluate a potential problem and the claimant, whose shift was ending, stated she would look at it tomorrow. The oncoming nurse overheard the conversation and went to check the resident's bottom. After reading the claimant's co-workers' written statements and auditing the claimant's charts, Ms. Young determined the claimant incorrectly handled a catheter situation with one resident and a g-tube incident with another resident. Ms. Young audited seven of the claimant's charts and found at least one failure to follow doctors' orders on each chart. She made the determination that there were too many incidents to allow the claimant to continue in her position with the employer. The claimant testified that she performed her job as she always had without complaint in the past and that she used her best nursing judgment in some instances. She stated she filled out reports the same way as she had done since beginning her employment. She acknowledges the verbal warning was justified. The employer usually issues a verbal warning, a written warning, and a final written warning before termination, but the disciplinary action taken depends on the severity of the situation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). While the claimant did not meet the employer's expectations and the employer believed she showed a pattern of failing to follow doctors' orders, the evidence shows the claimant was not doing anything differently than she had been doing since she started; but, either the employer's standards changed, or it began to monitor the claimant more closely. Either way, the claimant's actions seemed to warrant at least a written warning actually being issued to her, if not a final written warning, to make it clear to her that her actions were not acceptable to the employer. The claimant may have made some errors in judgment and her documentation may not have met the employer's expectations, but both were things she did throughout her employment without complaint and there is not enough evidence to conclude her actions rise to the level of intentional job misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The October 10, 2011, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw