

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DIXIE L HARRISON
Claimant

WASHINGTON CARE CENTER INC
Employer

APPEAL NO. 09A-UI-17316-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/18/09
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant appealed a department representative's decision dated November 6, 2009, reference 01, that held she was discharged for misconduct on October 21, 2009, and benefits are denied. A telephone hearing was held on December 28, 2009. The claimant participated. Marty Wills, Administrator, participated for the employer.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses, and having considered the evidence in the record, finds that: The claimant began work on May 30, 2007, and last worked for the employer as an LPN/Charge nurse on October 20, 2009. As a charge nurse, the claimant is responsible for seeing that a resident is checked every two hours for condition/cares.

On October 20, the claimant reported to management that a certified nursing assistant had failed to check on a resident in accordance with policy. The claimant had been observing the nursing assistant and she noted that the care had not been provided, and did so prior to reporting the incident. The employer discharged the assistant on October 21, 2009, and the claimant for failing to timely check on the resident. Although the claimant signed for the termination notice, she does not admit any policy violation.

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 administrative law judge concludes that the employer failed to establish misconduct in the discharge of the claimant on October 21, 2009, because the claimant did not violate the employer policy.

The claimant reported the nursing assistant failure to check the resident and the employer properly discharged that person for a serious violation of policy. The claimant had been observing the assistant and knew of the violation that she reported. The employer offered no evidence the claimant admitted she violated the policy though she did have a responsibility to oversee the conduct of her subordinates. There is insufficient evidence that the claimant committed a policy violation that warrants job disqualifying misconduct.

DECISION:

The decision of the representative dated November 6, 2009, reference 01, is reversed. The claimant was not discharged for misconduct in connection with employment on October 21, 2009. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css