

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NANCY SWARTZENDRUBER
Claimant

APPEAL NO: 13A-UI-09895-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CHRISTIAN RETIREMENT SERVICES INC
Employer

OC: 07/21/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 19, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 17, 2013. The claimant participated in the hearing. Patricia Heiden, Executive Director; Kim Bergen Jackson, Director of Health Services; and Diana Ely, Human Resources Director; and Thomas Hobart, Attorney, participated in the hearing on behalf of the employer. Employer's Exhibits One through Three were admitted into evidence.

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 part-time RN for Oaknoll Retirement Services from November 27, 2000 to July 23, 2013. She was discharged for keeping an apartment nurses' notebook and not including much of that information in the employer's 24 hour report.

The employer has independent living, assisted living and nursing home living facilities. During the week of July 15, 2013, Kim Bergen-Jackson, Director of Health Services, was given a notebook found by the new full-time RN apartment nurse that replaced the claimant. Ms. Bergen-Jackson learned the claimant started the spiral notebook informally in 2011, when she was still working full-time, and other department nurses contributed to it. The notebook contained information that should have been contained in the employer's 24 hour nursing report, used by the nursing community at the facilities.

On an entry for March 17, 2011, the claimant wrote, "finished Z pak, still coughing. I have not put any of this on 24R" (Employer's Exhibit One). In May 2011, a resident with a new cancer diagnosis went home to independent living and no one beside the apartment nurses were aware

of the diagnosis, including other nurses that worked other shifts with that resident (Employer's Exhibit One). On January 8, 2012, the claimant indicated a resident had an appendectomy January 4, 2012, but she did not enter into the 24 hour report because they are a "very private couple" (Employer's Exhibit One). On August 5, 2012, a resident was preparing for a colonoscopy and the claimant wrote about it in the notebook and made a note in the margin stating, "I haven't put this info on 24R report" (Employer's Exhibit One). Because of the claimant's practice, residents would often be left alone after bad news or surgery without the other nurses knowing.

In January 2011 a situation occurred in which a resident was ready to die because of her chronic pain and stopped eating and drinking but the claimant did not include that information in the 24 hour report or share the problem with the rest of the staff in order that they might be able to help the resident as a team (Employer's Exhibit One). The resident was subsequently referred to hospice for treatment of chronic pain but the leadership team was not notified of this event either. The claimant told the employer the resident did not want anyone to know and the employer told her she needed to reply, "I'm obligated to tell Ms. Heiden or Ms. Bergen-Jackson. During a heated January 2011 meeting, regarding the situation with the resident who wanted to die, Executive Director Patricia Heiden told the claimant information must be provided to her because she was responsible for everything. She told the claimant the subject was non-negotiable and she must tell her. Ms. Bergen-Jackson also told the claimant she expected any resident change be communicated to Ms. Heiden or herself, especially if the information might be considered delicate and the claimant did not want to include that information in the 24 hour report. The 24 hour report was to contain any information the leadership team needed to know. Apartment nurses do not cover the independent living residents 24 hours a day, seven days a week and are not on call so if the information is required, and is not in the 24 hour report, the leadership team and other necessary personnel had no way of receiving it.

At an open house February 7, 2013, a resident came up to Ms. Heiden and said, "Isn't it terrible about (a resident's) diagnosis of stage four cancer?" and Ms. Heiden did not know what she was talking about because the claimant had not communicated the information to her.

When the employer was given the notebook in July 2013 and found all of the items the claimant kept from it and the 24 hour report, it terminated her employment July 23, 2013.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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.

While the claimant was often times trying to follow the resident's wishes, the employer made it clear in January 2011 that it expected the claimant to keep it apprised of any pertinent information relating to patient diagnosis, surgeries, procedures, mental health issues, etc. so it could monitor those situations and address each properly. The claimant was told in no uncertain terms she must at the very least provide that information to Ms. Heiden and Ms. Bergen-Jackson but instead the claimant started keeping her private notebook with a couple other apartment nurses and failed to share important information the employer needed to know. The claimant knew or should have known the employer's expectations after the January 2011 meeting but despite being told what information she must pass on the claimant failed to do so.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits must be denied.

DECISION:

The August 19, 2013, reference 01, decision is affirmed. The claimant was discharged from employment for disqualifying job misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs