

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BEVERLY A HOOK
Claimant

CARE INITIATIVES
Employer

APPEAL NO. 14A-UI-07315-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/22/14
Claimant: Appellant (1)

Iowa Code § 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Beverly Hook (claimant) appealed an unemployment insurance decision dated July 9, 2014 (reference 01) which held that she was not eligible for unemployment insurance benefits because she was discharged from Care Initiatives (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 15, 2014. The claimant participated in the hearing with Attorney E.J. Flynn. Certified Nursing Assistant Rena Trembah participated pursuant to subpoena by the claimant. The employer participated through Administrator Terra Tuttle, Director of Nursing Lori Pearson; and Hearing Representative Treve Lumsden. Employer's Exhibits One through Four were admitted into evidence.

ISSUE:

The issue is whether the claimant was discharged for work-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked as a full-time licensed practical nurse and was employed from September 8, 1998 through June 11, 2014 when she was discharged pursuant to the employer's progressive disciplinary policy. The employer has a progressive disciplinary policy which divides offenses based on their seriousness. The policies divide offenses into Critical/Type A, Major/Type B, and Minor/Type C. Minor/Type C violations result in a verbal warning for the first offense, a written warning for the second offense, and a final written warning for the third offense. Employees are discharged upon their fourth violation of a Minor/Type C policy.

The first Major/Type B violation results in a final written warning and three-day suspension. The second violation of this type of rule results in immediate termination. If within the previous 12 months, an employee has received a Minor/Type C final warning and violates a Major/Type B policy, the employee is terminated. Critical/Type A policy violations are severe and may result in suspension pending the investigation of an alleged violation. Substantiated Critical/Type A violations may result in termination.

The claimant received a Major/Type B final warning/suspension on January 12, 2014 for failing to do paperwork after a resident had been lowered to the floor, which is considered to be the same as a fall. All falls must be properly documented so that the care providers can watch for potential bruises or other injuries resulting from the fall. The claimant signed the Major/Type B warning and provided no written comments on the warning.

The claimant was discharged on June 11, 2014 after she failed to use a gait belt when transferring a resident who is a fall risk and alarmed, which means she wears an alarm to notify the employer when she moves to prevent the risk of falling. The resident's care plan and MDS showed that the resident required extensive assistance from two staff members for transfers and toileting. The claimant transferred this resident without a gait belt while in front of an inspector from the Department of Health and Human Services, Centers for Medicare & Medicaid Services. The employer received a deficiency report as a result of the claimant's actions. The June 12, 2014 deficiency report documents the June 11, 2014 incident in detail on two pages. The report confirms the resident has a score of 18 on her most recent fall risk evaluation completed on May 23, 2014. Any score above a ten means a resident is at a high risk for falls.

The report indicates the inspector first observed the claimant in the bathroom with the resident on June 11, 2014 at 10:00 a.m. Without using a gait belt, the claimant helped the resident to stand up while the claimant cleaned her peri-area. The claimant seated the resident back on the toilet. The claimant then called Certified Nursing Assistant Rena Trembah for assistance when moving the resident from the toilet to the wheelchair. The claimant did not have a gait belt with her but the CNA had one and had arrived in the room to stand behind the wheelchair. Without placing the gait belt on the resident, the claimant then "assisted the resident to stand and pivot turn on both feet and then to sit on the wheelchair." The inspector subsequently interviewed the claimant and the claimant reported that she did not use the gait belt in the transfer of the resident because the resident was "independent with transfers." When questioned how she knew this, the claimant said it was on the resident care plan which is taped on the inside of the bathroom door. The inspector reviewed the "Activities of Daily Living" instruction sheet taped on the inside of the resident's door and the instructions require that the resident, "was to be transferred with the assistance of two staff members and a wheeled walker."

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-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. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on June 11, 2014 after she violated a second Major/Type B policy in front of a state inspector from the Department of Health and Human Services.

The claimant admits she did not use a gait belt to transfer the resident but contends the resident transferred herself and then suggests the CNA should have placed the gait belt on the resident. The claimant denies telling the inspector that the resident was independent with transfers. Although the deficiency report was prepared on the day following the incident, it addressed the incident and was the best evidence as there was no bias with regard to the receipt of unemployment insurance benefits.

The claimant knew her job was in jeopardy, knew that the resident required a transferred assist, knew that a state inspector was observing her actions but proceeded to transfer the resident in an unsafe manor. Her actions demonstrate a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated July 9, 2014 (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/can