

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NEIL G HERBOLD
Claimant

APPEAL NO: 14A-UI-08285-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NORTHWEST IOWA HOSPITAL CORP
Employer

OC: 07/20/14
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's August 5, 2014 (reference 02) determination that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for non-disqualifying reasons. The claimant participated at the September 23 hearing with his attorney, Jean Pendleton. Ken Schneiders, a safety and security employee, testified on the claimant's behalf. Kami Petitgoue, Attorney at Law, represented the employer. Brad Neuendorf, a nurse manager on the behavioral unit, and Barb Caskey appeared on the employer's behalf.

The parties identified potential documents before the hearing. During the hearing, Employer Exhibits Two and Eleven and Claimant Exhibits A and B were offered and admitted as evidence. Claimant Exhibit M was offered, but was not admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

In March 2012 the claimant started working for the employer as a full-time mental health technician. After the claimant started his employment, the employer showed him a video about using restraints. The video informed the claimant that a mental health technician could place restraints on a patient only after instructed to do so by a nurse. The claimant received and continued receiving non-violent intervention training (Claimant's Exhibit A). The employer requires nurses to direct a mental health technician to apply restraints when a patient's personal safety is at risk or the patient could put another person's safety at risk (Claimant's Exhibit B and Employer's Exhibit Eleven). The employer considers using restraints as a last resort.

During his employment, the claimant received some warnings, but his job was not in jeopardy prior to July 15, 2014. The claimant received raises in June 2014 for his job performance.

In November 2013 the claimant received a verbal warning when he reported that the employer did not have a bed for a patient when the employer did have a bed. The employer considered this a safety violation because the patient was not admitted and sent to another facility.

On July 15 a patient had been placed in restraints before the claimant came to work. During a briefing session Neuendorf made the comment to employees, including the claimant, that if you have to put this patient in restraints, put him in restraints. After Neuendorf left, two nurses who worked during the claimant's shift concluded the patient was delusional, he needed many redirections, he had poor boundaries, and he resisted setting boundaries. This patient yelled at employees and hit the door at the nurse's station. The nurses later criticized the claimant's interaction with the patient because he argued the patient's belief, which escalated the patient's behavior. Even though the nurses reported this type of conduct occurred over the course of two hours, no one said anything to the claimant.

As a result of the patient's continued aggressive behavior, the nurses decided to give the patient medication. Before the nurses went to the med room to prepare the injection for the patient, the claimant was told to request help from other male employees, or a Silent Code Strong. Schneiders and a male ER nurse responded. When the nurses were getting the medication ready, the claimant told the patient that if he did not calm down he would receive medication. The patient willingly walked into the seclusion room so he had more privacy. In the seclusion room, the patient voluntarily laid on the bed. The restraints that had been used before were still there. Although the patient placed his hands in the restraints, the restraints were not used then because he was not violent. The patient was told that if calmed down there would not be any issues. The patient then lunged forward with his fists clenched and told the claimant that he would kick him. The patient was then put back on the bed and the claimant started putting restraints on the claimant's hands. Schneiders and the ER nurse put on the other restraints. Schneiders did not think there was a problem putting on the restraints. Usually when a Code Strong is called, a patient is either physically restrained or restraints are used when medication is administered. After the patient lunged at the claimant and verbally threatened him, restraints were placed on the patient.

The nurses came in with the injection after the patient had been restrained. Before the medication was administered, the patient lunged at one of the nurses. After the medication was administered, the claimant asked if the restraint should be removed or left on. The nurse told the claimant to do what he thought was best. After the nurses left, the claimant talked to the patient and got him to verbally agree that he would control himself. After the patient made this verbal commitment, the restraints were removed and the claimant helped him to his bed.

During a later debriefing session, the claimant asked the nurse what could have been done better. One of the nurses told him to ask a nurse before he put restraints on a patient.

The next day, Neuendorf talked to the claimant about the July 15 incident. The claimant acknowledged he made the decision to put the patient in restraints.

On July 17 after the employer discharged the claimant, the claimant did not understand why he was discharged. He reminded Neuendorf that Neuendorf was the person who told employees to put the patient in restraints if his behavior escalated to the point restraints were needed. Even though Neuendorf did not mean this as a blanket order for the claimant to put restraints on the patient, the claimant told him on July 17 that he followed his instructions. Neuendorf concluded the claimant misunderstood his directive. The employer decided the claimant acted outside the scope of his duties and discharged him because this was a safety violation.

The claimant established a claim for benefits during the week of July 20, 2014. The employer did not participate at the fact-finding interview. The claimant has filed weekly claims and received benefits since July 20, 2014.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *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 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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant's job was not in jeopardy before the July 15 incident. On July 15 the claimant and nurses worked with a difficult and delusional patient for several hours. When the patient did not calm down, the nurses made the decision to give the claimant medication, a chemical restraint (Employer's Exhibit Eleven). Before the nurse went to prepare the medication, the claimant received an instruction to request other male employees to come to the area.

The patient voluntarily lay on a bed in the seclusion room. Only after he lunged at the claimant with a clenched fist and threatened to kick him did the claimant start to put restraints on the patient. The two other male employees followed the claimant. When the nurses came back to administer the medication, neither one said anything about the restraints. Before the medication was administered, the patient lunged at one of the nurses and had to be physically placed back on the bed. Even after the medication was administered, the nurse did not direct the claimant to remove the restraints even though he asked. As soon as the patient verbally agreed to control his behavior, the claimant removed the restraints.

The evidence establishes, and the claimant acknowledged, he received no direction from the nurses he had been working with after Neuendorf left to put the patient in restraints. The claimant stepped outside the scope of his duties. While this may be serious, Neuendorf acknowledged that the claimant misunderstood his earlier comment as a blanket directive to use restraints if necessary. The evidence does not establish that Neuendorf intended to give anyone a blanket directive without the proper assessment. Even though the employer does not want to restrain patients, the evidence indicates that when a Code Strong is issued, a patient is typically physically restrained or restraints are used.

While the claimant stepped outside the scope of his duties, he did not use the restraints until the patient physically and verbally threatened him. The patient was out of control at that time and even lunged at a nurse before any medication was given to him. The claimant used poor judgment when he placed the restraints on the patient without a nurse directing him to do so. The employer established business reasons for discharging the claimant. The facts do not establish that the claimant intentionally or substantially disregarded the standard of behavior the employer had a right to expect from the claimant. The claimant did not commit work-connected misconduct. As of July 20, the claimant is qualified to receive benefits.

DECISION:

The representative's August 5, 2014 (reference 02) determination is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of July 20, 2014 the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

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